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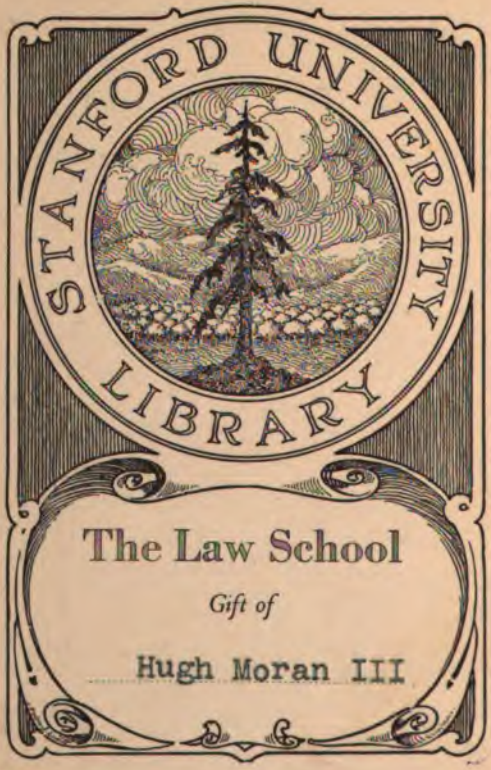

TCR
DE
1892

Frederick Hornby

THE

CODE OF CRIMINAL PROCEDURE

OF THE

STATE OF NEW YORK. (State), Lafayette

As amended, including 1892.

WITH NOTES OF DECISIONS,

A TABLE OF SOURCES,

COMPLETE SET OF FORMS,

AND

A FULL INDEX.

ELEVENTH REVISED EDITION.

BANKS & BROTHERS,

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STATE OF NEW YORK,
OFFICE OF THE SECRETARY OF STATE, } ss.:

I, Frank Rice, Secretary of State, do hereby certify that the following book contains a correct transcript of the Code of Criminal Procedure, passed June 1, 1881, and the acts amendatory thereof.

In witness whereof, I have hereunto set my signature, at the city of Albany, this sixteenth day of June, in the year one thousand eight hundred and ninety-two.

FRANK RICE,
Secretary of State.

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2 R. S., 903, § 34.

§ 871.
Id., § 35.

§ 872.
Id., § 36.

§ 873.
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§ 886.
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§ 887.
2 R. S., 836, § 1.

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2 R. S., 893, § 1.

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§ 915.
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§ 945.
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The Code of Criminal Procedure.

CHAPTER 442, LAWS OF 1881.

As Amended by Laws of 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891 and 1892.

AN ACT

To establish a Code of Criminal Procedure.

Passed June 1, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PRELIMINARY PROVISIONS.

Section 1. Title of the Code.
2. Divisions of the Code.
3. No person punishable but on legal conviction.
4. Crimes, how prosecuted.
5. Criminal action defined.
6. Parties to a criminal action.
7. The party prosecuted known as defendant.
8. Rights of defendant in a criminal action.
9. Second prosecution for the same crime prohibited.
10. No person to be a witness against himself in a criminal action or to be unnecessarily restrained.

Section 1. **Title of Code.**— This act shall be known as the Code of Criminal Procedure of the State of New York.

Fraser *v.* Board, etc., 17 N. Y. St. Rep. 875.

§ 2. **Divisions of the Code.**— This Code is divided into six parts. The first relates to the courts having original jurisdiction in criminal actions;

The second relates to the prevention of crime;

The third relates to the judicial proceedings for the removal of public officers by impeachment or otherwise;

The fourth relates to the proceedings in criminal actions prosecuted by indictment;

The fifth relates to proceedings in special sessions and police courts;
The sixth relates to special proceedings of a criminal nature.

People v. Petrea, 92 N. Y. 128; 65 How. 59; 1 N. Y. Cr. 223.

§ 3. **No person punishable but on legal conviction.**— No person can be punished for a crime except upon legal conviction in a court having jurisdiction thereof.

Art. 1, § 1, N. Y. Const.; U. S. Const. fifth amendment. No conviction on *ex parte* affidavits. Ex parte James, 30 How. Pr. 446; Cameron v. Tribune Ass'n, 27 N. Y St. Rep. 912; Taylor v. Porter, 4 Hill, 140; Plato v People, 3 Park. 596; Warren v. People, id. 544; Happy v. Mosher, 48 N. Y 313; People v. Brady, 56 id. 182; People ex rel. McDonald v. Keeler 99 N. Y. 463; 32 Hun, 594.

§ 4. **Crimes, how prosecuted.**— A crime must be prosecuted by indictment, except

1. Where proceedings are had for the removal of a civil officer of the state on impeachment by the assembly for willful or corrupt misconduct in office;

2. Where proceedings are had for the removal of justices of the peace, police justices and justices of justices' courts and their clerks;

3. A crime arising in the militia when in actual service, and in the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace;

4. Such crimes as are hereinafter or in special statutes specified as cognizable by courts of special sessions and police courts.

Art. 1, § 6, N. Y. Const., fifth amendment, Fed. Const.

§ 5. **Criminal action defined.**— The proceeding by which a party charged with a crime is accused and brought to trial and punishment, is known as a criminal action.

§ 6. **Parties to a criminal action.**— A criminal action is prosecuted in the name of the people of the state of New York, as plaintiffs, against the party charged with crime.

People v Johnson, 104 N. Y 216. 5 N. Y. Cr 217; affirming, 4 id. 591.

§ 7. **The party prosecuted known as defendant.**—The party prosecuted in a criminal action is designated in this Code as the defendant.

People v. Johnson. 104 N. Y. 216; 5 N. Y. Cr. 217; affirming, 4 id. 591.

§ 8. **Rights of defendant in a criminal action.**— In a criminal action the defendant is entitled

1. To a speedy and public trial;

2. To be allowed counsel as in civil actions, or he may appear and defend in person and with counsel; and,

3. To produce witnesses in his behalf, and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a magistrate, and the testimony reduced by him to the form of a deposition in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine, the witness, or, where the testimony of a witness on the part of the people, has been taken according to *the provisions of* section two hundred and nineteen *of this Code*, the deposition of the witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found in the state. [AM'D CH. 422 OF 1887.]

Sub. 1. See 6th Amend. Const. U. S. Sub. 2. Art. 1, § 6, N. Y. Const. See People ex rel. Garling *v.* Van Allen, 55 N. Y. 31. Sub. 3. No rights before coroner. Crisfield *v* Perrine, 15 Hun, 200; s. c., 81 N. Y. 622. Escaped prisoner can have no relief. People *v.* Genet, 59 N. Y. 80. Due diligence. People *v.* Murphy, 1 N. Y. Cr. 102. Conditional examination. People *v.* Williams, 35 Hun, 516; 3 N. Y. Cr 63; People *v.* Fish, 128 N. Y. 152. Counsel. People ex rel. Burgess *v.* Risley, 66 How. 67; People *v.* Palmer, 43 Hun, 401; 2 N. Y. Cr. 106; People *v.* Mayor, etc., 19 Hun, 452; People ex rel. Garling *v.* Allen, 55 N. Y. 31; People ex rel. McDonald *v.* Keeler, 99 id. 463. Opportunity for cross-examination. People *v.* Penhollow, 42 Hun, 103; 5 N. Y. Cr. 41; People *v.* Williams, 35 Hun, 516; 3 N. Y. Cr. 68. Dying declarations. People *v.* Smith, 104 N. Y. 491; 5 N. Y. Cr. 161; People *v.* Sweeney, 41 Hun, 332. Depositions. Wightman *v.* People, 67 Barb. 44; Mut. Life Ins. Co. *v.* Anthony, 50 Hun, 101, 105; People *v.* Guidici, 100 N. Y. 503; 3 N. Y. Cr. 551. See People ex rel. McDonald *v.* Keeler, 32 Hun, 589; People *v.* Sprague, 54 Cal. 491; People *v.* Leong Sing, 77 id. 117; People *v.* Brotherton, 47 id. 388; Summons *v.* State, 5 Ohio St. 340; Gilbreath *v.* State, 26 Tex. App. 318; State *v.* McO'Blenis, 24 Mo. 412.

§ 9. Second prosecution for the same crime prohibited.— No person can be subjected to a second prosecution for a crime for which he has once been prosecuted, and duly convicted or acquited.

Art. 1, § 6, N. Y. Const. Former trial and conviction, without judgment, sustains a plea of *autre fois convict*. Shepherd *v.* People, 25 N. Y. 406. See People *v.* Goodwin, 18 Johns. 200; People *v.* Barrett, 1 id. 66; Id. *v.* Olcott, 2 ib. Cas. 301; Id. *v* Cramer, 5 Park. 171; Id. *v.* McCloskey, ib. 57; Id. *v.* Saunders, 4 ib. 196; Id. v. Warren, 1 ib. 338; Id. *v.* Allen, ib. 415; Id. *v.* Van Keuren, 5 ib. 66; Id. v. Krummer, 4 ib. 217; Id. *v.* Townsend, 3 Hill, 479; Canter *v.* People, 1 Abb. Dec. 305; People *v.* Krummer, 1 Sheld. 549; Gardiner *v.* People, 6 Park. 155; People *v.* Casborus, 13 Johns. 351; Burns *v.* People, 1 Park. 182; People *v.* Comstock, 8 Wend. 549. When former judgment reversed, new indictment may be found. Kelley *v.* People, 6 Hun, 509. See People *v.* Ruloff, 5 Park. 77. Where wrong judgment rendered on regular conviction, cannot retry. Shepherd *v.* People, *supra*; but may remit record and resentence. Hussey *v.* People, 47 Barb. 503. A verdict of conviction on one count, acquits on all others. Guenther *v.* People, 24 N. Y. 100; People *v.* Dowling, 23 A. L. J. 353. See People *v.* Fisher, 14 Wend. 9; People *v.* Ward, 15 id. 231; People *v.* McGowan, 17 id. 386; People *v.* Green, 13 id. 55; King *v.* People, 5 Hun, 297; People *v.* Richards, 44 id. 288; People *v.* Peck, 4 N. Y. Cr. 148; People ex rel. Van Houten *v.* Sadler, 97 N. Y. 146; 3 N. Y. Cr. 471; People *v.* Miller, 38 Hun, 82; 3 N. Y. Cr. 475; People *v.* Scully, id. 244; People *v.* Burch, 5 id. 29; People *v.* Palmer, 109 N. Y. 417; Hartung *v.* People, 26 id. 167; People *v.* Reagle, 60 Barb. 527; People *v.* Cignarale, 110 N. Y. 29; People *v.* Dowling, 84 id. 478; People *v.* Seeley, 37 Hun, 190; 3 N. Y. Cr. 225; 2 How. (N. S.) 105; Grant *v.* People, 4 Park. 527. Klock *v.* People, 2 id. 676; People *v.* Majors, 65 Cal. 138; 52 Am. Rep. 295; McFarland *v.* State, 68 Wis. 400; 60 Am. Rep. 867; Bell *v.* State, 48 Ala. 684; 17 Am. Rep. 40; Shular *v.* State, 105 Ind. 289; 55 Am. Rep. 217; People *v.* Keefer, 65 Cal. 232; People *v.* Stanley, 47 id. 113; 17 Am. Rep. 401; Bohanan *v.* State, 18 Neb. 53; 53 Am. Rep. 791; Com. *v.* Arnold, 83 Ky. 1 4 Am. St. 114.

§ 10. No person to be a witness against himself, etc., or unnecessarily restrained.—No person can be compelled in a criminal action to be a witness against himself, nor can a person charged with crime be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

See § 393, post, Fifth Amend. Fed. Const art. 1, § 6, N. Y. Const. Defendant may be required to answer when it cannot be used against him. Perrine *v.* Striker, 7 Pai. 598; People ex rel. Hackley *v.* Kelley, 24 N. Y. 74. How a defendant can waive this privilege. Connors *v.* People, 50 N. Y. 240. Witness against himself. People *v.* Mondon, 103 N. Y. 211; 38 Hun, 198; 4 N. Y. Cr. 123; Connors *v.* People, 50 N. Y. 240; Brandon *v.* People, 42 id. 571; People *v.* Brown, 72 id. 571; People *v.* Crapo, 76 id. 288; People *v.* Courtney, 94 id. 490; 1 N. Y. Cr. 573; affirming, 31 Hun, 199; 1 N. Y. Cr. 577; People v. Sharp, 107 N. Y. 427. Unnecessary restraint. Ruloff *v.* People, 45 N. Y. 213; People *v.* Harrington, 42 Cal 165; 10 Am. Rep. 296. Identity by track or exposure of person. State *v.* Graham, 74 N. C. 646; 21 Am. Rep. 498; State *v.* Garret, 71 N. C. 85; 17 Am. Rep. 1; Blackwell *v.* State, 67 Ga. 76; 44 Am. Rep. 717; State *v.* Sanders, 68 Mo. 202; 30 Am. Rep. 782; Walker v. State, 7 Tex. App. 245; 32 Am. Rep. 595; Campbell *v.* State, 55 Ala. 80.

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS.

TITLE I. OF THE COURTS OF ORIGINAL CRIMINAL JURISDICTION IN GENERAL.
II. OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.
III. OF THE COURTS OF OYER AND TERMINER.
IV. OF THE CITY COURTS.
V. OF THE COURTS OF SESSIONS.
VI. OF THE COURTS OF SPECIAL SESSIONS AND POLICE COURTS.

TITLE I.

Of the Courts of Original Criminal Jurisdiction in general.

SEC. 11. Of the courts of original criminal jurisdiction.

§ 11. Of the courts of original criminal jurisdiction.—The following are the courts of justice in this state having original jurisdiction of criminal actions:

1. The court for the trial of impeachments;
2. The courts of oyer and terminer;
3. The city courts of Brooklyn, Buffalo, Utica, Oswego and Hudson;
4. The courts of sessions, in counties other than New York;
5. The court of general sessions in the city and county of New York;
6. The courts of special sessions;
7. The police courts.

The courts of special sessions and police courts are deemed inferior courts not of record, within the section of the Constitution

which provides for the removal of justices of the peace and judges, or justices of inferior courts not of record, and their clerks, by such county, city or state courts as are designated by law; but for no other purpose.

See §§ 18, 19, art. 6 of State Const. Coulter v. Murray, 15 Abb. (N. S.) 129; Wenzler v. People, 58 N. Y. 516.

TITLE II.

Of the Court for the Trial of Impeachments.

SEC. 12. Its jurisdiction.
13. Members of the court.
14. Presiding judge.
15. Clerks and officers.
16. Seal of the court.
17. Time of holding the court.
18. Oath to members of the court.
19. Adjournments, etc.
20. Compensation of members and officers of the court.

§ 12. **Its jurisdiction.** — The court for the trial of impeachments has power to try impeachments, when presented by the assembly, of all civil officers of the state, except justices of the peace, justices of of justices' courts, police justices, and their clerks, for willful and corrupt misconduct in office.

Art. 6, § 1, 18, N. Y. Const.

§ 13. **Members of the court.**— The court is composed of the president of the senate, the senators, or a majority of them, and the judges of the court of appeals, or a majority of them, but on the trial of an impeachment against the governor, the lieutenant-governor can not act as a member of the court.

Art. 6, § 1, N. Y. Const.

§ 14. **Presiding judge.**— The president of the senate, or in case of his impeachment, death or absence, the chief judge of the court of appeals, or in the absence of both, such other member as the court may elect, is the presiding judge of the court.

§ 15. **Clerks and officers.**— The clerk and officers of the senate are the clerk and officers of the court for the trial of impeachments.

§ 16. **Seal of the court.**— The seal of the court for the trial of impeachments now deposited and recorded in the office of the secretary of state shall continue to be the seal of this court and must be kept in the custody of the clerk of the senate.

§ 17. Time of holding the court.—Upon the delivery of an impeachment from the assembly to the senate, the president of the senate must cause the court to be summoned to meet at the capitol in the city of Albany, on a day not less than thirty nor more than sixty days from the day of the delivery of the articles of impeachment.

§ 18. Oath to members of the court.—At the time and place appointed, and before the court proceeds to act upon the impeachment, the clerk must administer to the presiding judge, and the presiding judge to each of the members of the court then present, an oath or affirmation truly and impartially to try and determine the impeachment; and no member of the court can act or vote upon the impeachment, or any question arising thereon, without having taken this oath or affirmation.

§ 19. Adjournments, etc.—The court may adjourn from time to time and hold its sessions at such places as it may determine, but no more than two sessions of the court can be held during the recess of the legislature in any one year.

§ 20. Compensation of members and officers of the court.—The writ and process of the court must be signed by the clerk and tested in the name of the president of the senate. The president of the senate and each senator are entitled to receive for their services and expenses while actually attending the court, the same rate of compensation as an associate judge of the court of appeals is entitled by law to receive for his services and expenses as such judge for the same time. The other officers of the court, excepting the judges of the court of appeals, are entitled to the same compensation for their attendance thereon, and for traveling to and from the place where it is held, as is allowed them for attending a meeting of the senate, but no such compensation shall be received for attending the court during a session of the legislature.

TITLE III.

Of the Courts of Oyer and Terminer.

SEC. 21. Court of oyer and terminer in each county.
22. Its jurisdiction.
23. By whom held.
24. Writ or process.
25. Clerk.

§ 21. Court of oyer and terminer in each county.—There is in each of the counties of this state, except that for this purpose Ful-

ton and Hamilton are deemed one county, a court of oyer and terminer, with the jurisdiction conferred by the next section and no other, but nothing contained in this section affects its jurisdiction in actions or proceedings now pending therein.

It is a continuous court. Appo v People, 20 N Y. 531; Naughton v. People, 7 Abb. (N. S.) 421; People v. Palmer, 109 N. Y. 415, 416; People ex rel. Sherwin v. Mead, 92 id. 415; People v. Bork, 96 id. 188.

§ 22. **Its jurisdiction.**—The court of oyer and terminer has jurisdiction:

1. To inquire, by the intervention of a grand jury, of all crimes committed or triable in the county; but in respect of such minor crimes as courts of special sessions or police courts have exclusive jurisdiction to hear and determine, in the first instance, the jurisdiction of the oyer and terminer attaches only after the certificate mentioned in section fifty-seven of this Code.

2. To try and determine all such crimes and to try all persons indicted for the same.

3. To deliver the jails of the county, or city and county, according to law, of all prisoners therein.

4. To try any indictment found in the court of sessions of the county, or the court of general sessions of the city and county of New York, which has been sent by order of the court of sessions or general sessions to and received by the court of oyer and terminer, or which has been removed from any court into the court of oyer and terminer, if, in the opinion of that court, it is proper to be tried therein.

5. To exercise the same jurisdiction as a court of sessions in a cause or proceeding transferred according to sections 40 and 41 of this Code.

6. By an order, entered in its minutes, to send any indictment found therein for a crime triable at the court of sessions of the county or the court of general sessions of the city and county of New York, to such court.

7. To grant new trials in all cases tried therein.

8. To let to bail any person committed, before and after indictment found upon any criminal charge whatever.

9. To exercise the powers conferred upon it by other provisions of this Code and by special statutes.

Court cannot adjourn to place not appointed for holding. Northrup v Peo., 37 N. Y. 268. See §§ 41, 343 to 353, 465, *post*. Peo. v. Bork, 96 N.Y. 188; Peo. ex rel. Sherwin v. Mead, 28 Hun, 227; 64 How. 41; 92 N. Y. 415; Peo. v. Ostrander, 29 Hun, 513; 1 N. Y. Cr. 274; 17 W. Dig. 373; Peo. v. Myers, 2 Hun, 626; Dolan v. Peo. 6 id. 496; 64 N. Y. 485; Thompson v. Peo. 6 Hun, 135; Peo. v. Gay, 10 Wend. 509; Peo. v. Appo. 20 N. Y. 577; Peo. v. Sessions, 3 Barb. 144; Peo. v. Cavanaugh, 2 Abb. 84; Neal v. Peo. 42 N. Y. 470; Peo. v. Clews, 4 Abb. N. C. 226; Peo. v. Gardner, 6 Park. 143; Peo. v. Palmer, 109 N. Y. 415, 416.

§ 23. **By whom held.**— A court of oyer and terminer is held by a justice of the supreme court, without an associate.

Art. 6, § 7, N Y. Const.; see Smith *v.* People, 47 N. Y. 330; see § 962, post. People *v.* Bork, 31 Hun, 363; 96 N Y. 188; 2 N. Y. Cr. 177; People ex rel. Bork *v.* Gilbert, 1 N. Y. Cr. 398; People *v.* Shaw, 63 N Y. 36; Cancemi's case, 18 Id. 128, People *v.* Hovey, 92 Id. 554; 1 N. Y. Cr. 232; People *v.* Cornetti, 92 N. Y. 85; People *v.* Miller, 2 Park. 197; People *v.* Ostrander, 29 Hun, 513; 1 N. Y. Cr 274; 17 W. Dig 373.

§ 24. **Writ or process.**— A writ or process issued out of the court of oyer and terminer must be tested in the name of a justice of the supreme court of the district, and may be directed by the court into any county of the state, as occasion requires.

§ 25. **Clerk.**— Except the clerk of the county of New York, the clerk of each county is, by virtue of his office, the clerk of the court of oyer and terminer held therein.

TITLE IV.

Of the City Courts.

CHAPTER I. The city court of Brooklyn.
II. The superior court of Buffalo.
III. The other city courts
IV. General provisions relating to city courts.

CHAPTER I.

THE CITY COURT OF BROOKLYN.

SEC. 26. Jurisdiction.
27. By whom held.

§ 26. **Jurisdiction.**— The city court of Brooklyn has criminal jurisdiction:

1. To the same extent and in the same manner, and with the same power as a court of oyer and terminer in the county of Kings in the indictment and trial of all offenses committed in the city of Brooklyn, whenever a bill of indictment for any such offense has been transmitted to the court by the court of sessions or court of oyer and terminer of the county of Kings;

2. To remand any such indictment to the court of sessions or court of oyer and terminer of the county of Kings;

3. To prosecute a forfeited recognizance taken by the court of sessions or court of oyer and terminer of Kings county and binding the party or parties and witnesses to such indictment to appear in the city of Brooklyn.

See § 12, art. 6 of State Const.; §§ 307-313 of Code of Civil Procedure.

§ 27. **By whom held.** — Any one of the judges of the city court of Brooklyn may hold a court of criminal jurisdiction.

CHAPTER II.

THE SUPERIOR COURT OF BUFFALO.

SEC. 28. Jurisdiction.
29. By whom held.
30. Terms.

§ 28. **Jurisdiction.** — The superior court of Buffalo has criminal jurisdiction:

1. To inquire by a grand jury of all crimes committed in the city of Buffalo;

2. To try and determine all indictments found therein, or sent thereto by another court for a crime committed in that city;

3. To send any indictment pending therein undetermined to the court of oyer and terminer or to the court of sessions of the county of Erie to be determined according to law;

4. At a general term thereof exclusively to review upon motion on the indictment, with or without a bill of exceptions, its decisions and judgments, and grant new trials.

See §§ 292 to 300 of Code of Civil Pro.; People *v.* Dimick, 107 N. Y. 13, 33; 41 Hun, 633; 5 N. Y. Cr. 200.

§ 29. **By whom held.** The court for the trial of indictments and the transaction of criminal business other than specified in subdivision 4 of the last section, may be held by any one of the justices thereof.

See §§ 295, 296 of Code of Civ. Pro.

§ 30. **Terms.** — There must be at least four terms of the court for the trial of indictments and the transaction of criminal business held in each year, to be appointed as prescribed in section 280 of the Code of Civil Procedure.

See §§ 295, 296 of the Code of Civil Procedure.

CHAPTER III.

THE OTHER CITY COURTS.

SEC. 31. Other city courts.
32. By whom held.

§ 31. **Other city courts.** — The other city courts, having original criminal jurisdiction, are the recorder's court of Utica, the recorder's court of Oswego, and the mayor's court of Hudson. Their jurisdic-

tion in criminal matters is defined by special statutes, and continues as thus defined.

§ 32. **By whom held.**— These courts for the exercise of their criminal jurisdiction must be held by the following officers:

1. The city courts of Utica and Oswego by the recorders of those cities repectively;
2. The mayor's court of Hudson, by the mayor of that city.

CHAPTER IV.

GENERAL PROVISIONS RELATING TO CITY COURTS.

SEC. 33. Indictments for offenses punishable with death to be sent to oyer and terminer.
34. Indictments for crime not punishable by death.
35. Indictments when to be sent to city court.
36. Court continued beyond terms.

§ 33. **Indictments for offenses punishable with death, etc.**—When an indictment is found at a city court for a crime punishable with death, the court may send it to the next court of oyer and terminer of the county.

§ 34. **Indictments for crime not punishable by death.** — A city court may also send an indictment found therein and remaining undetermined for a crime not punishable with death to the next court of oyer and terminer of the same county, to be determined according to law. But that court, if, in its opinion, the same is not proper to be tried therein, may remit it back to the court by which it was sent, which must proceed thereon as if it had remained there.

§ 35. **Indictments when sent to city court.**— When an indictment is found at a court of oyer and terminer, or of sessions, in a county embracing any of the cities in which a city court having original criminal jurisdiction is established, for an offense committed in that city, the court in which it was found may send it to the next city court in which it is triable, which must proceed to try and determine the indictment as if it had been found therein.

§ 36. **Court continued beyond terms.**— If the trial of a cause be commenced before the expiration of the term of a city court the court may be continued beyond the term, to the completion of the trial and the rendering of judgment on the verdict.

TITLE V.

Of the Courts of Sessions.

CHAPTER I. The courts of sessions in general.
II. The courts of sessions in counties other than New York.
III. The court of general sessions of the city and county of New York.

CHAPTER I.

THE COURTS OF SESSIONS IN GENERAL.

SEC. 37. General provisions.
38. The courts of sessions.

§ 37. **General provisions.**— There is in each of the counties of this state a court denominated the court of sessions, with the jurisdiction conferred by the next two chapters and no other, but nothing containing in this section affects its jurisdiction in actions or proceedings now pending therein.

Art. 6, § 15, N. Y. Const.; People *v.* Bradner, 107 N. Y. 1; People *v.* Cook, 45 Hun, 34.

§ 38. **The courts of sessions.**—The courts of sessions are :

1. The courts of sessions in counties other than New York;

2. The court of general sessions in the city and county of New York.

CHAPTER II.

COURTS OF SESSIONS IN COUNTIES OTHER THAN NEW YORK AND KINGS.

SEC. 39. Jurisdiction.
40. Indictments to be transferred to oyer and terminer.
41. Id.; remitting back.
42. By whom held.
43. Justice disqualified.
44. Same.
45. When and where held ; jurors.
46. Jurors, when to be drawn.
47. Clerk.
48. Writ or process.
49. Compensation of justice.

People *v.* Rugg, 3 N. Y. Cr. 177.

§ 39. **Jurisdiction.**—The courts of sessions embraced in this chapter have jurisdiction :

1. To inquire by the intervention of a grand jury of all crimes committed or triable in the county; but in respect of such minor crimes, as courts of special sessions or police courts have exclusive jurisdiction to hear and determine, in the first instance, the jurisdiction of the sessions attaches only after the certificate mentioned in section fifty-seven of this Code.

2. To try and determine indictments found therein or sent thereto by the court of oyer and terminer of the county or by a city court in the county for crimes not punishable with death.

3. To hear and determine appeals from orders of justices of the peace, under the provisions of law respecting the support of bastards.

4. To examine into the circumstances of persons committed to prison as parents of bastards, and to discharge them in the cases provided by law.

5. To try and determine complaints under the provisions of law respecting masters, apprentices and servants.

6. To review the convictions of disorderly persons actually imprisoned, and to execute the powers conferred and duties imposed by law in relation to those persons.

7. To continue or discharge recognizances, undertakings and bonds of persons bound to keep the peace or to be of good behavior, and to inquire into and determine the complaints on which they were founded.

8. To compel relatives of poor persons and committees of the estates of lunatics to support such persons and lunatics in the cases and manner prescribed by law.

9. To exercise the powers conferred by law in relation to the estates of persons absconding and leaving their families chargeable to the public.

10. To let to bail persons indicted therein for any crime triable therein, as provided by law.

11. To let to bail persons committed to the prison of the county before indictment for any offense triable in the court.

12. To discharge persons who have remained in prison without indictment or trial in the cases prescribed by law.

13. To revoke licenses in the cases and mode prescribed by law.

14. To grant new trials in all cases tried therein.

15. To execute such other powers and duties as may be conferred by statute, or are now defined by special statute relating thereto.

See §§ 41, 343-353, 465, 961, *post*; People *v.* Bradner, 107 N. Y. 1, 5; People ex rel. Vitan *v.* Vitan, 20 Abb. N. C. 298; Leighton *v.* People, 88 N. Y. 117; 10 Abb. N. C. 261; People *v.* Moneghan, 1 Park. 570; Myers *v.* People, 14 Hun, 416; People *v.* Sullivan, 49 id. 333; People *v.* Sessions, 15 Abb. 59, McFall *v.* People, 18 Hun, 382.

§ 40. **Indictments to be sent, etc.** — A court of sessions must send every indictment there found for a crime not triable therein to the court of oyer and terminer of the county, or to a city court having jurisdiction to try and determine the same.

People *v.* McCraney, 21 How. 149; People *v.* Porter, 4 Park. 594: Thompson *v.* People, 6 Hun, 135.

§ 41. Other indictments, etc.—A court of sessions may send an indictment pending therein to the court of oyer and terminer of the same county, to be determined according to law, and if such indictment is remitted back without trial by the court of oyer and terminer, the court of sessions may proceed thereon.

See § 344, *post*; People *v.* Bradner, 107 N. Y. 1, 5; Leighton *v.* People, 88 N. Y. 117; 10 Abb. N. C. 261; People *v.* Gay, 10 Wend, 509; People *v.* Sessions, 3 Barb. 144.

§ 42. By whom held.— A court of sessions must be held by the county judge, with two justices of sessions to be designated according to statute. If the justices of sessions, or either of them, fail to attend the commencement of, or during the term, or if his office at such time is or becomes vacant, the county judge, by an order entered in the minutes, may designate any justice of the peace of the county to serve as justice of sessions during the term, or if the order is made by reason of non-attendance, until the absentee attends.

See § 15, art. 6 of State Const.; art. 6, § 15, N. Y. Const. Verdict cannot be received in absence of justices. Hinman *v.* People, 13 Hun, 266. If justices be changed or absent during trial, it is a mistrial. Shaw *v.* People, 3 Hun, 272; Blend *v.* People, 41 N. Y. 604. A trial justice cannot testify. Dohring *v.* People, 2 S. C. 458; People *v.* Dohring, 59 N. Y. 374; Cyphers *v.* People, 31 N. Y. 373; 5 Park. 666; People v. Bork, 31 Hun, 371; 2 N. Y. Cr. 75; People *v.* Cornetti, 93 N. Y. 85; 1 N. Y. Cr. 303; 16 W. Dig. 441; People *v.* Bork, 1 N. Y. Cr. 393; People *v.* Moneghan, 1 Park. 570; Northrup *v.* People, 37 N. Y. 203; Smith *v.* People, 47 id. 330.

§ 43. Justice disqualified.— Whenever a justice of sessions is disqualified to act in any cause or proceeding pending in a court of sessions, the county judge must designate some other justice of the peace of the county, to act as member of the court during the trial or determination of such cause or proceeding.

General provisions as to disqualifications of judicial officers; see 3 R. S (6th ed.) p. 436, §§ 2, 7, 8, and cases cited; chap. 111 of 1883; Baldwin *v.* McArthur, 17 Barb. 414.

§ 44. Id.— If the county judge is, for any cause, incapable of acting in any criminal action or proceeding pending in the court of sessions, the court must transfer the same to the court of oyer and terminer of the county, or to a city court having jurisdiction of such an action or proceeding, *or may request the county judge of any other county, except New York and Kings, to preside at and hold courts of sessions and county courts in said county.* [AM'D CH. 339 of 1886.]

§ 45. When and where held; Juries.— A court of sessions must be held at such times as the county judge of the county, by order, designates, and at the place where the county courts are held for the trial of issues of fact by a jury. Such order must designate the

terms at which a grand or petit jury, or both, or neither, is required to attend; and neither a grand jury nor a petit jury is required to be drawn, or summoned to attend a term thus designated to be held without a jury. The order must be published in a newspaper printed in the county, for four successive weeks previous to the time of holding the first term under such order.

Courts can only be held pursuant to appointment. People v. Moneghan, 1 Park. 570. What is sufficient appointment. People v. Wilcox, 23 How. Pr. 297; Cypher v. People, 31 N. Y. 373; 5 Park. 666; People v. Rudd, 98 N. Y. 535; 3 N. Y. Cr. 172; People v. Bates, 38 Hun, 180; People v. Sullivan, 49 id. 333; 4 N. Y. Cr. 193; Northrop v. People, 57 N. Y. 203.

§ 46. **Jurors, when to be drawn.**— If a county judge fail to designate the term at which a grand or petit jury is required to attend, the grand and petit jurors must be drawn and summoned for each term mentioned in the order mentioned in the last section.

See § 226, post. Cyphers v. People, 31 N. Y. 373; People v. Rugg, 3 N. Y. 177; 98 N. Y. 537.

§ 47. **Clerk.**— Except in the city and county of New York, and the county of Kings, the clerk of the county is the clerk of the court of sessions thereof.

§ 48. **Writ or process.**— Every writ or process issued out of a court of sessions may be tested on any day of the term in which the court is sitting, and be made returnable on any other day of the same term, or at the next term.

49. **Compensation of justice.**— A justice of sessions is entitled to receive three dollars for each day's attendance at a court of sessions, and five cents a mile for traveling expenses in coming to and returning from the court. *The justices of the sessions in the county of Kings shall each receive the compensation allowed to them by law in force before the adoption of the Code* [AM'D CH. 641 OF 1886.]

CHAPTER III.

THE COURT OF GENERAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK AND THE COURT OF SESSIONS IN THE COUNTY OF KINGS.

SEC. 50. These courts continued; proceedings now pending.
51. Jurisdiction.
52. Division of court.
53. Parts, by whom held.
54. When held and its duration.
55. Accommodation for court and officers.

§ 50. **These courts continued; proceedings now pending**— The courts known as the court of general sessions in and for the city and

county of New York, and the court of sessions in and for the county of Kings are continued, with the jurisdiction conferred by the next two sections and no other. But nothing contained in this section affects their jurisdiction of actions and proceedings now pending therein.

See § 961, *post*. Removal of indictment. Thompson *v.* People, 6 Hun, 135; Dolan *v.* People, ib. 493; s. c. 64 N. Y. 485; Leighton *v.* People, 88 N. Y. 117.

§ 51. **Jurisdiction.**— The court of general sessions of the city and county of New York and the court of sessions of the county of Kings have jurisdiction :

1. To try, determine and punish according to law, all crimes cognizable within their respective counties, including crimes, punishable with death or imprisonment in the state prison for life.

2. To exercise, in cases arising in their respective counties the same powers as are conferred by this Code upon courts of sessions in other counties.

3. To try and determine any indictment found in the court of oyer and terminer of the county, which has been sent by order of that court to and received by the court of sessions therein ; and,

4. To exercise such powers as are now prescribed by special statute relating thereto.

See §§ 15, 14, *et seq.*; chap. 410 of 1882; People *v.* Boyle, 2 N. Y. Cr. 54; People *v.* Goodwin, 18 Johns. 187; People *v.* Shepard, 19 How. 446; Walters *v.* People, 19 Abb. 212; McFarland's Case, 7 Abb. N. S. 348; Lonergan *v.* People, 39 N. Y. 39; reversing, 50 Barb. 266; 6 Park. 209; overruling, People *v.* Sessions, 15 Abb. 59; Ex Parte Marks, 14 id. 105, n; People *v.* Powell, 9 id. 91; Dolan *v.* People, 6 Hun, 493; 64 N. Y. 485; May *v.* People, 12 Hun, 380; Thompson *v.* People, 6 id. 135.

§ 52. **Division o. court.**— The court of general sessions of the city and county of New York is divided into three parts.

§ 53. **Parts, by whom held.**—Any one of the three parts of the court of general sessions of the city and county of New York may be held by the recorder of the city of New York, or the city judge, or the judge of the court of general sessions. A judge of the court of common pleas for the city and county of New York may also hold it. The court of sessions of the county of Kings must be held by the county judge of the county of Kings, with two justices of the sessions, designated according to statute.

§ 54. **When held and duration.**—Each part of the court of general sessions in and for the city and county of New York, may be held each month, commencing on the first Monday and continuing so long as, in the opinion of the judge sitting and of the district attorney, the public interest requires, but one part only is required to be held

during the months of July and August, and two parts only during the rest of the year.

Ferris v. Peo. 35 N. Y. 125; 31 How. 140; 48 Barb. 17; 1 Abb. (N. S.) 193; Lowenberg v. Peo. 27 N. Y. 336; 5 Park. 414; 26 How. 202.

§ 55. **Accommodation for courts and officers, etc.**—The courts have the same power to direct suitable provisions to be made for their accommodation as is now possessed by the supreme court. The recorder, city judge and judge of the court of general sessions of the city and county of New York, must appoint a clerk, and not more than four deputy clerks, two interpreters and two stenographers. The clerk and deputy clerks so appointed must act also as clerks of the court of oyer and terminer in the city and county of New York. The county judge of the county of Kings shall, by writing filed with the county clerk, appoint a clerk of the court of sessions of the county, who shall be removable by him at any time for incompetency, negligence or official misconduct, in which case he may appoint another; the county clerk of the county of Kings must deliver to the clerk of the sessions all books and records of the court of sessions in his custody. The clerk of the sessions must appoint a deputy clerk, a first assistant clerk, and not more than three second assistant clerks, such clerk, deputy and assistants shall receive salaries respectively the same as that now paid to the clerk, deputy clerk, and assistant clerks serving in that county, payable monthly by the treasurer of the county; such court of sessions shall, by an order entered in its minutes adopt a seal, which seal when so adopted shall be the seal of the court of sessions of the county of Kings. [AM'D CH. 137 OF 1892; in effect immediately.]

TITLE VI.

Of the Courts of Special Sessions and Police Courts.

CHAPTER I. The special sessions except in the cities of New York and Albany.
II. The special sessions in the city and county of New York.
III. The special sessions of the city of Albany.
IV. The police courts.

CHAPTER I.

THE SPECIAL SESSIONS EXCEPT IN THE CITIES OF NEW YORK AND ALBANY.

SEC. 56. Jurisdiction of courts.
57. Exclusive jurisdiction.
58. Limitation.
59. Trial and punishment of certain crimes.
60. Special sessions in Brooklyn.
61. Id.; in Oswego.
62. By whom held.
63. Recorder of a city to hold court.

§ 56. Jurisdiction of courts.— Subject to the power of removal provided for in this chapter, courts of special sessions, except in the city and county of New York and the city of Albany, have in the first instance exclusive jurisdiction to hear and determine charges of misdemeanors committed within their respective counties as follows:

1. Petit larceny, charged as a first offense.

2. Assault in the third degree.

3. Racing, running or testing the speed of any animal within one mile of the place where any court is held.

4. Wrongfully severing any produce or article from the freehold, not amounting to grand larceny.

5. Selling poisonous substances labeled as required by law.

6. Wrongfully and maliciously removing, defacing or cutting down monuments or marked trees.

7. Wrongfully destroying or removing mile stones, mile boards or guide boards, or altering or defacing any inscription thereon.

8. Wrongfully destroying any public or toll-gate or turnpike gate.

9. Intoxication of a person engaged in running any locomotive engine upon any railroad, or while acting as a conductor of a car, or train of cars, on any such railroad, *or a misdemeanor committed by any person on a railroad car or train.* [AM'D CH. 521 OF 1890; in effect Sept. 1, 1890.]

10. Setting up or drawing unauthorized lotteries, or printing and publishing an account of any such illegal lottery, game or device, or selling lottery tickets, or procuring them to be sold, or offering for sale or distributing any property depending upon any lottery, or for selling any chances in any lottery contrary to the provisions of law.

11. Unlawfully running, trotting or pacing horses or any other animals.

12. Making or selling slung-shot or any similar weapon.

13. Unlawfully disclosing the finding of an indictment.

14. Unlawfully bringing to or carrying letters from any *county jail, penitentiary or* state prison.

15. Unlawfully destroying or injuring any mill-dam or embankment necessary for the support of such dam.

16. Unlawfully injuring any telegraph wire, post, pier, abutment, materials or property belonging to any line of telegraph.

17. Unlawfully counterfeiting any representation, likeness, similitude or copy of a private stamp, wrapper or label of any mechanic or manufacturer.

18. Malicious trepass on lands, trees, or timber, or injuring any fruit or ornamental or shade *trees or vines.*

19. Maliciously breaking or lowering any canal walls, or wantonly

opening any lock-gate or destroying any bridge or otherwise unlawfully injuring such canal or bridge.

20. Unlawfully counterfeiting or defacing marks on packages.

21. Unlawfully setting fire to wood or fallow land, or allowing the same to extend to lands of others, or unlawfully refusing to extinguish any fire.

22. Unlawfully or negligently cutting out, altering or defacing any mark on any logs, timber, wood or plank, floating in any waters of this state or lying on the banks or shores of any such waters, or at any saw-mills or on any island where the same may have drifted.

23. Unlawfully frequenting or attending a steamboat landing, railroad depot, church, banking institution, broker's office, place of public amusement, auction room, store, auction sale at private residence, passenger car, hotel, restaurant, or at any other gathering of people.

24. Unlawfully taking and carrying away the oysters of another, lawfully planted upon the bed of a river, bay, sound, or other waters within the jurisdiction of this state.

25. Removing property out of the county, with intent to prevent the same from being levied upon by execution, or secreting, assigning, conveying, or otherwise disposing of property, with intent to defraud any creditor, or to prevent the property being made liable for the payment of debts; or for receiving property with such intent.

26. Driving *any* carriage upon any turnpike, road or highway for the purpose of running horses.

27. Cruelty to animals *or children.*

28. Cheating at games.

29. Winning or losing at any game or play, or by any bet, as much as twenty-five dollars within twenty-four hours.

30. Selling liquors in a court-house or jail contrary to law.

31. Crimes against the provisions of existing laws for the prevention of wanton or malicious mischief.

32. *When a complaint is made to or a warrant is issued by a committing magistiate,* for a violation of the laws relating to excise and the regulation of taverns, inns and hotels, or for unlawfully selling or giving to any Indian spirituous liquors or intoxicating drinks.*

33. *Frauds on hotel, inn, tavern and boarding-housekeepers.*

34. Such other jurisdiction as is now provided by special statute or municipal ordinance authorized by statute. [AM'D CH. 372 of 1884; CH. 28 of 1886; CH. 133 of 1889.]

See People *v.* McTammeny, 1 N. Y. Cr. 440; People *v.* Bates, 38 Hun, 180; People ex rel. Stokes *v.* Riseley, 38 Hun, 281; People *v.* Kennedy, 2 Park. 319; People ex rel. Comaford *v.* Dutcher, 20 Hun, 241; 83 N. Y. 240; People ex rel. Murray *v.* Justices, 74 id. 406; Devine *v.* People, 20 Hun, 98; People ex rel.

* So in original.

Stetzer v Rawson, 61 Barb 619; People v. Austin, 49 Hun, 397; Lattimore v. People, 10 How. 336; People v. Starks, 17 N. Y. St. Rep. 238; People ex rel. Knowlton v. Sadler, 2 N. Y. Cr. 438; People v. Hollenbeck, 1 id. 437; People v. McGann, 43 Hun, 55; People ex rel. Baker v. Beatty, 39 Hun, 477; 4 N. Y. Cr. 287; People ex rel. McGrath v. Board, etc. 119 N. Y. 130; Fraser v. Board, etc. 17 N. Y. St. Rep. 875; People v. Upton, 29 id. 778; Matter of Bray, 34 id. 642; People ex rel. Coon v. Wood, 35 N. Y. St. Rep. 843.

Subd. 1; People v. Cook, 45 Hun, 37; People v. McTameney, 30 id. 505; 13 Abb. N. C. 55; 66 How. 70; 17 W. Dig. 492.

Subd. 2; People v. Palmer, 109 N. Y. 416; 43 H. 405; 5 N. Y. Cr. 101; Matter of Lord, 10 Abb. N. C. 292; 63 How. 97.

Subd. 10; People v Dewey, 33 N. Y. St. Rep. 427.

Subd. 12; People v. Burleigh, 1 N. Y. Cr. 522.

Subd. 32; People v Andrews, 50 Hun, 591; 115 N. Y. 427.

Subd. 33; People ex rel. Miller v. Cooper, 42 Hun, 196.

§ 57. **Exclusive jurisdiction.**—Upon filing with the magistrate, before whom is pending a charge for any of the crimes specified in the last section, a certificate of the county judge of the county, or of any justice of the supreme court that it is reasonable that such charge be prosecuted by indictment, and fixing the sum in which the defendant shall give bail to appear before the grand jury; and upon the defendant giving bail, as specified in the certificate, all proceedings before the *magistrate* shall be stayed; and he shall, within five days thereafter, make a return to the district attorney of the county of all proceedings had before him upon the charge, together with such certificate and the undertaking given by the defendant thereon; and the district attorney shall present such charge to the grand jury; *provided, however, that no such certificate shall be given except upon at least three days' notice to the complainant or to the district attorney of the county of the time and place for the application therefor.* [AM'D CH. 398 OF 1884.]

See chap. 390 of 1879. See cases under last section. Also, People v. Carnrick, 39 N. Y. St. Rep. 596; People v. Wilber, id. 743; People v. Hulett, id. 647.

§ 58. **Limitation.**—When a person is brought before a magistrate charged with the commission of any of the crimes mentioned in section fifty-six, and asks that his case be presented to the grand jury, the proceedings shall be adjourned for not less than five nor more than ten days; and if on or before the adjourned day the certificate mentioned in section fifty-seven is not filed with the magistrate before whom the charge is pending, and bail given by the defendant as therein prescribed, the magistrate shall proceed with the trial, and when the defendant is brought before the magistrate, it shall be the duty of the magistrate to inform him of his rights under section fifty-seven and this section.

People v. Goodwin, 5 Wend. 251; People v. McGann, 43 Hun, 55; People v. Burleigh, 1 N. Y. Cr. 521; Gill v. People, 3 Hun, 187; 60 N. Y. 643; People v. Starks, 17 N. Y. St. Rep. 237; People v Mallon, 39 How. 454; People ex rel. Coon v. Wood, 35 N. Y. St. Rep. 843; Matter of Lord, 10 Abb. N. C. 293; 63 How. 97; People v. Carnwick, 39 N. Y. St. Rep. 596; People v. Hulett, id. 647.

§ 59. Trial and punishment of certain crimes.—A court of special sessions having jurisdiction in the place where any of the crimes specified in section fifty-six is committed has jurisdiction to try and determine a complaint for such crime, and to impose the punishment, prescribed upon conviction; unless the defendant obtains the certificate and gives the bail mentioned in section fifty-seven.

People ex rel. Coon *v.* Wood, 35 N. Y. St. Rep. 843; People *v.* McGann, 43 Hun, 56; People *v.* Austin, 49 Id. 396.

§ 60. Special Sessions in Brooklyn.—Subject to the power of removal provided *for* by sections fifty-seven and fifty-eight of this Code, the courts of special sessions in the city of Brooklyn shall, in the first instance, have exclusive jurisdiction to try and determine all complaints for misdemeanors committed in said city, where the term of imprisonment does not exceed one year, with or without fine, excepting conspiracy, and to impose the same punishment as is authorized by statute in like cases to be inflicted by the court of sessions of the county of Kings. *Where any jury is required for the trial of any crime or misdemeanor in said courts of special sessions in the city of Brooklyn, the said courts shall have power to summons as many jurors as the court may deem necessary for the trial of such action or misdemeanor. The said court of special sessions in the city of Brooklyn shall have power to take bail in a reasonable amount for all misdemeanors, and shall have power to take undertakings in bail either with or without the defendant thereon in the discretion of the said court. All fines imposed by the said courts of special sessions in the city of Brooklyn, or by police magistrates in said city, upon defendants convicted in said courts or by such magistrates, of crimes, misdemeanors or violations of any city ordinance of the city of Brooklyn, which are paid by such defendants so convicted to the sheriff of the county of Kings or to the keeper of the penitentiary of said city, shall be paid monthly by the said sheriff of said keeper to the respective clerks of the courts in which the said fines were imposed; provided, however, that the said sheriff or keeper of the penitentiary of Kings county may, in his discretion, pay all of such fines so paid to them, or either of them, directly to the city treasurer of the city of Brooklyn. In an examination held in any criminal proceeding by a police magistrate in the city of Brooklyn, the testimony of each witness may, in the discretion of the magistrate, be taken as a deposition by the official stenographer of the court in which said magistrate holds such examination. Such minutes of the testimony when so taken, and when certified by the stenographer and by the magistrate who held such examination, shall both with reference to such examination, and in all*

procedure in connection with such examination provided for by any section of this Code not inconsistent herewith, be regarded as actually taken down in writing by such magistrate and subscribed by the witness or witnesses at such examination. [AM'D CH. 45 OF 1885, AND 364 OF 1889.]

People *v.* Green, 4 N. Y. Cr. 443.

§ 61. Id.; in Oswego.— The court of special sessions in the city of Oswego, where held by the recorder, has also jurisdiction over all cases of offenses, crimes against public decency, selling unwholesome provisions, cheats, breaches of the peace, disobeying the commands of officers to render assistance in criminal cases, obstructing officers in the discharge of their duties, adulterating distilled spirits, not delivering marked property, defacing marks or putting false marks on floating timber, all violations against the laws and ordinances of or applicable to the city, when such violation is a misdemeanor, and all attempts to commit any crimes herein named or referred to when such attempt is a misdemeanor.

§ 62. By whom held.— Unless provision is otherwise made by law, a court of special sessions must be held by one justice of the peace of the town or city in which the same is held, and sections two hundred and ninety-three, two hundred and ninety-four, two hundred and ninety-five, three hundred and ten, three hundred and thirty-two, three hundred and thirty-three, three hundred and thirty-four, three hundred and thirty-five, three hundred and thirty-six, three hundred and thirty-seven, three hundred and thirty-eight, three hundred and thirty-nine, three hundred and forty, three hundred and forty-one, three hundred and forty-two and three hundred and fifty-nine to four hundred and fifty, both inclusive, shall apply as far as may be to proceedings in all courts of special sessions or police courts.

Matter of Bray, 34 N. Y. St. Rep. 642; People *v.* Bates, 38 Hun, 181; see 4 N. Y. Cr. 215.

§ 63. Recorder of a city to hold court.—A recorder of a city has power to hold a court of special sessions therein.

People ex rel. Miller *v.* Cooper, 42 Hun, 197; People ex rel. Fitzpatrick *v.* French, 33 Id. 116.

CHAPTER II.

THE SPECIAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK.

SEC. 64. Jurisdiction.
65. Officers, how appointed.
66. Term of office.
67. Court, when held.

§ 64. Jurisdiction.—The court of special sessions in the city and county of New York has jurisdiction:

1. To try and determine according to law all complaints for misdemeanors, unless the defendant elects to be tried at the court of general sessions, or the court of special sessions sends the case to the court of general sessions for trial;

2. To remit fines imposed by it, and in place of the fine remitted, substitute, in its discretion, imprisonment;

3. By an order entered in its minutes, to declare forfeited the recognizance of a defendant, taken by the court, to appear thereat, upon his failure so to appear;

4. To impose the same punishment as is authorized by statute to be inflicted in like cases tried in the court of general sessions of the peace of that city and county;

5. By warrant attested in the name of any one of the justices authorized to hold the court, signed by the clerk thereof, and entered in the minutes of the court, to enforce its judgments and orders; to bring before the court all accused persons for trial and judgment in all cases in which it has jurisdiction; to issue subpœnas for the attendance of witnesses, attachments for contempt, and other process necessary for the proper conduct of the court;

6. To require the principal in a recognizance to appear at the court, and enter into a further recognizance to keep the peace, or to be of good behavior, or both, toward the people of the state, for a period not exceeding one year, and in default thereof to commit him to prison till he be discharged therefrom according to law.

See §§ 741 to 748 of Code of Cr. Pro. People v. Bernardo, 1 N. Y. Cr. 245. Matter of Bray, 34 N.Y. St. Rep. 642; People ex rel. Fellows v. Hogan, 123 N. Y. 219; 55 Hun, 394; People v. Finn, 87 N. Y. 533; 26 Hun, 58; Matter of McMahon 1 N. Y. Cr. 62; 64 How. 285; People v. Mallon, 39 How. 454; People ex rel. Doyle v. Johnson, 19 id. 11; 10 Abb. 294; Devine's Case, 5 Park. 62; 21 How. 89; 11 Abb. 90.

§ 65. Officers, how appointed.—The police justices of the city and county of New York, by the vote of a majority, have the exclusive power to appoint the clerk, deputy clerk, stenographer, interpreter and other officers of the court of special sessions in the city and county of New York.

§ 66. Term of office.—The term of office of the clerk and deputy clerk of the court of special sessions in the city and county of New York is the same as the term of office of the police justices of that city.

§ 67. Court, when held.—The court of special sessions in the city and county of New York, may be held as often and at such times as the justices thereof may think expedient.

CHAPTER III.

THE SPECIAL SESSIONS IN THE CITY OF ALBANY.

SEC. 68. Jurisdiction.
69. Bail or commitment.
70. Petit larceny; assaults.
71. By whom held; officers to attend.
72. Clerk.
73. Court, when and where held.

§ 68. **Jurisdiction.**— The court of special sessions in the city of Albany has jurisdiction:

1. To try and determine all cases of petit larceny charged as a first offense, and all misdemeanors, not being infamous crimes, committed within the city.

2. To take recognizances to appear before the court at a succeeding term from persons charged with a crime or misdemeanor, triable therein.

3. To impose and enforce sentence of fine or imprisonment, or both, in the discretion of the court, in all cases within its jurisdiction, upon conviction to the same extent as the court of sessions of the county of Albany could do in like cases.

4. To punish a contempt of court in the same manner and to the same extent as the court of oyer and terminer of the county could do in like cases.

5. In cases where a jury trial is demanded by a defendant, to draw from the jury box containing the names of jurors who reside in the city of Albany, such number of names as the recorder or county judge may direct, and to require the sheriff of the county to summon the persons so drawn to appear at the time designated for trial, to impanel a jury of twelve men, to require the attendance of additional jurors and to punish a juror or witness neglecting to appear, in the same manner and to the same extent as the court of oyer and terminer of the county could do in like cases.

6. On motion of the district attorney, to issue a warrant for the arrest of a person who neglects to appear agreeably to the requirements of a recognizance to appear thereat, commanding the officer executing the same to bring the party forthwith before the court, if in session, otherwise to commit him to the common jail of the county, there to remain until delivered by due course of law.

See chap. 264, Laws, 1872, amended, id. 364, Laws, 1881; Matter of Bray, 34 N. Y. St. Rep. 642; People v. Parr, 42 Hun 316; 4 N. Y. Cr. 545; People v. Hallenbeck, 1 N. Y. Cr. 437; 65 How. 404; see 4 N. Y. Cr. 545.

§ 69. **Bail or commitment.** — Upon charges for offenses triable by this court, the police magistrate or any other magistrate in the city hearing the same, shall, if offered, take recognizances in the cases

provided by law returnable at the court of special sessions; and all such recognizances as shall have been so taken shall be returned to and filed with the district attorney of the county of Albany. If no such recognizance be offered, the magistrate or magistrates shall commit the defendant to the common jail of the county of Albany until he shall be thence delivered in due course of law, and the trial of such person shall be had before the court of special sessions, except that where a police justice or other magistrate in this city has jurisdiction, the defendant may elect to be tried before such police justice or other magistrate.

§ 70. **Petit larceny; assaults.** — Whenever a person is brought before a police justice or other magistrate of the city, charged with any of the following crimes, viz.:

Petit larceny charged as a first offense, offenses against the laws relating to excise and the regulation of taverns, inns and hotels, offenses being misdemeanors against the laws relating to gaming.*

Assaults upon, and interference with, a public officer in the discharge of his duty, and it shall appear to the magistrate that the crime has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must order him to be held to answer the charge before the court of special sessions.

§ 71. **Officers to attend.** — The court of special sessions in the city of Albany must be held by the recorder of the city, with or without one or more of the justices of the peace to be associated with him. In case of the absence or inability of the recorder to act, the county judge of the county of Albany must act in his place. If the recorder and county judge are both unable, by reason of absence or other cause, to hold the court, the clerk must adjourn the court to the next following Tuesday, and continue such adjournments until the recorder or county judge attends. Not more than two officers shall be designated or appointed by the sheriff or other authority to attend the court of special sessions of the city of Albany, unless the court shall, by an order entered in its minutes, require the attendance of a greater number.

§ 72. **Clerk.**— The county clerk of Albany county is clerk of the court of special sessions of the city of Albany, and must attend the same in person or by deputy.

§ 73. **Court, when and where held.**— The court of special sessions of the city of Albany must be held at the city hall in the city of

* Sic.

Albany, on Tuesday of each week, and may be held and continued for such length of time as it deems proper.

CHAPTER IV.

THE POLICE COURTS.

SEC. 74. Jurisdiction.
75. Election of justices.
76. Justice to take and file oath of office, etc.
77. Justice, how to hold office.
78. Compensation of justice.

§ 74. Jurisdiction.— Police justices have such jurisdiction, and such only, as is specially conferred upon them by statute. The courts held by police justices are called police courts, and courts of special sessions are also called police courts, and are so designated in different parts of the Code.

Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 285; People v. Trumble, 1 N. Y. Cr. 443; People ex. rel. Lynch v. Duffy, 49 Hun, 276.

§ 75. Election of justices.— Upon the application in writing of not less than twenty-five electors, inhabitants of any incorporated village in this state in which no provision now exists for the election of a police justice, the board of trustees of such village may determine, by resolution to be entered in their minutes of proceedings, that a police justice should be elected for such village; and if they so determine, the electors of the village may, at their next annual election, or at a special election to be called for the purpose, and to be conducted in the same manner as the annual election, choose a police justice who must be a resident elector of the village; and thereafter a police justice must be elected in such village, at the annual charter election next preceding the expiration of a regular term, or at the next annual election after a vacancy, on the same ticket with the other elective village officers. Any vacancy must be filled by appointment by the board of trustees of the village.

Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 285.

§ 76. Justice to take, etc., oath, etc.—A police justice elected or appointed as prescribed in the last section must, before entering upon the duties of his office, and within fifteen days after receiving notice from the village clerk of his election or appointment, take before the clerk, the constitutional oath of office, and file the same with the clerk, together with a bond with such sureties and in such amount as shall be approved by the board of trustees of the village, conditioned for the faithful performance of his official duties.

This oath is contained in § 1, art. 11 of State Constitution.

§ 77. Justice, how to hold office.—A police justice elected or appointed as prescribed in section seventy-five, holds his office as follows:

1. If elected at the first election held after the creation of the office, he must enter upon the duties of his office immediately after qualifying, as prescribed in the last section, and may hold his office until and including the thirty-first day of December, in the third year succeeding his election.

2. If elected at any subsequent election, except as prescribed in the next subdivision, he must enter upon the duties of his office on the first day of January succeeding his election and may hold his office for three years.

3. If elected to fill a vacancy, he must enter upon the duties of his office immediately after qualifying, as prescribed in the last section and may hold his office for the unexpired term.

4. If appointed, he must enter upon the duties of his office immediately after qualifying as prescribed in the last section, and may hold his office until his successor is elected and qualifies.

§ 78. Compensation of justice.—A police justice can not retain to his own use any costs or fees, but may receive for his services an annual salary, to be fixed in villages by the board of trustees, and in cities by the common council, except where the same is otherwise fixed by law; and such salary shall not be increased or decreased during his term of office.

PART II.

OF THE PREVENTION OF CRIME.

TITLE I. OF LAWFUL RESISTANCE.
II. OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

TITLE I.

Of Lawful Resistance.

CHAPTER I. General provisions respecting lawful resistance.
II. Resistance by the party about to be injured.
III. Resistance by other parties.

CHAPTER I.

GENERAL PROVISIONS RESPECTING LAWFUL RESISTANCE.

SEC. 79. Lawful resistance; by whom made.

§ 79. Lawful resistance, etc.—Lawful resistance to the commission of a crime may be made;

1. By the party about to be injured;
2. By other parties.

24 Alb. L. J. 1, 2.

CHAPTER II.

RESISTANCE BY THE PARTY ABOUT TO BE INJURED.

SEC. 80. In what cases; to what extent.

§ 80. **In what cases, etc.**—Resistance sufficient to prevent the crime may be made by the party about to be injured:

1. To prevent a crime against his person;
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

See § 26 of Penal Code, and note. Sub. 1. A person attacked if justified in reasonably apprehending great bodily harm and the danger imminent, may kill his assailant. Shorter *v.* People, 2 N. Y. 193; Patterson *v.* People, 46 Bar. 625; see People *v.* Lamb, 54 Bar. 342; People *v.* Austin, 1 Park. 154; People *v.* Cole, 4 Park. 35; Fomer *v.* People, ib. 558; Uhl *v.* People, 5 ib. 410. Party assailed must avoid attack, if possible to justify resistance. People *v.* Sullivan, 7 N. Y. 396; People v. Cole, sup.; People *v.* Harper, Edm. S. C. 180; Shorter *v.* People, sup. Resistance to prevent consummation of a felony. See Ruloff *v.* People, 45 N. Y. 213; People *v.* Hand, 4 Alb. L. J. 91. Need not first invoke protection against anticipated assault. Evers *v.* People, 3 Hun, 716; 63 N. Y. 625. Sub. 2. Defense of possession of real property. Corey *v.* People, 45 Barb. 282; Wood *v.* Phillips, 43 N. Y. 152; People *v.* Gulick, Lalor, 229; Harrington *v.* People, 6 Barb. 607. Defense of personal property. Gyre *v.* Culver, 47 Barb. 592.

CHAPTER III.

RESISTANCE BY OTHER PARTIES.

SEC. 81. In what cases.

§ 81. **In what cases.**— Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the injury.

TITLE II.

Of the Intervention of the Officers of Justice.

CHAPTER I. Intervention of public officers in general.
II. Security to keep the peace.
III. Police in cities and villages, and their attendance at exposed places.
IV. Prevention and suppression of riots.

CHAPTER I.

INTERVENTION OF PUBLIC OFFICERS IN GENERAL.

SEC. 83. In what case.
83. Persons acting in their aid, justified.

§ 82. In what cases.— Crimes may be prevented by the intervention of the officers of justice :

1. By requiring security to keep the peace;
2. By forming a police in cities and villages, and by requiring their attendance in exposed places;
3. By suppressing riots.

See §§ 84–101; 102–117, *post*.

§ 83. Persons, etc., in their aid, justified.—When the officers of justice are authorized to act in the prevention of crime, other persons, who by their command act in their aid, are justified in so doing.

See subd. 1, § 223 of Penal Code.

CHAPTER II.

SECURITY TO KEEP THE PEACE.

SEC. 84. Information of threatened crime.
85. Examination of complainant and witnesses.
86. Warrant of arrest.
87. Proceedings, on complaint being controverted.
88. Person complained of, when to be discharged.
89. Security to keep the peace, when required.
90. Effect of giving or refusing to give security.
91. Person committed for not giving security, how discharged.
92. Undertaking to be transmitted to sessions.
93. Security, when required, for assault, etc., in presence of a court or magistrate.
94. Appearance of party bound, upon his undertaking.
95. Person bound, may be discharged, if complainant does not appear.
96. Proceedings in sessions, on appearance of both parties.
97. Undertaking, when broken.
98. Undertaking, when and how to be prosecuted
99. Security for the peace not required except according to this chapter.

§ 84. Information of threatened crime.—An informatiom may be laid before any magistrate that a person has threatened to commit a crime against the person or property of another.

Bradstreet *v.* Ferguson, 17 Wend. 181; 23 id. 638; Wright *v.* Church, 110 N. Y. 463; People *v.* Boyle, 2 N. Y. Cr. 54.

§ 85. Examination, etc.— When the information is laid before a magistrate, he must examine on oath the complainant and any witnesses he may produce, and must reduce their examinations to writing, and cause them to be subscribed by the parties making them.

Bradstreet *v.* Ferguson, 17 Wend. 181; 23 id. 638.

§ 86. Warrant, etc.—If it appear from such examinations that there is just reason to fear the commission of the crime threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal or policeman of the city or town, reciting the substance of the informa-

tion, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

Bradstreet v. Ferguson, 17 Wend. 181; 23 id. 638; Richmond v. Dayton, 10 John. 393; People v. Parkes, 15 How. 551; Carpenter's Case, 1 C. H. Rec. 164.

§ 87. **Proceedings, etc.**— When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

People v. Boyle, 2 N. Y. Cr. 55; Duffy v. People, 6 Hill, 75.

§ 88. **Person complained of, etc.**—If it appear that there is no just reason to fear the commission of the crime alleged to have been threatened, the person complained of must be discharged.

People v. Boyle, 2 N. Y. Cr. 55

§ 89. **Security to keep the peace, when required.**— If, however, there be just reason to fear the commission of the crime, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next court of sessions of the county, and in the meantime to keep the peace toward the people of this state, and particularly toward the complainant.

Court of general sessions can not discharge. People v. Boyle, 2 N. Y. Cr. 54; Wright v. Church, 110 N. Y. 463; People v. Parkes, 15 How. 551; Richmond v. Dayton, 10 Johns. 393; People v. Mitchell, 2 S. C. 172; Doyle's Case, 19 Abb. 269; People v. Berner, 13 Johns. 383; Ritchey v. Davis, 11 Iowa, 124; Collins v. State, 11 Ind. 312; Com. v. Morey, 8 Mass. 312; Com. v. Braynard, 6 Pick. 113; Rankin v. Com. 9 Bush. 553.

§ 90. **Effect of giving or refusing, etc., security.**— If the undertaking required by the last section be given, the party complained of must be discharged. If it is not given, the magistrate must commit him to prison, specifying in the warrant the cause of commitment, the amount of security required, and the omission to give the same.

Wright v. Church, 110 N. Y. 463; Gano v. Hall, 42 id. 67; 5 Park. 651; Bradstreet v. Ferguson, 17 Wend. 181; 23 id. 638; Doyle's Case, 19 Abb. 269.

§ 91. **Person committed, etc., how discharged.**—If the person complained of be committed for not giving security, he may be discharged by any two justices of the peace of the county, or police or special justices of the city, upon giving the security.

§ 92. **Undertaking, to be transmitted to sessions.**— An undertaking given as provided in section 89, must be transmitted by the magistrate to the next court of sessions of the county.

§ 93. **Security, etc., for assault, in presence of court, etc.**—A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit a crime against his person or property, or who contends with another in angry words, may be thereupon ordered by the court or magistrate to give security as provided in section 89, or if he refuses to do so, may be committed as provided in section 90.

See § 182, *post*; Richmond *v.* Dayton, 10 John. 393; Sands *v.* Benedict, 2 Hun, 479.

§ 94. **Appearance of party bound, etc.**—A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the court of sessions of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted, unless his default be excused.

§ 95. **Person bound, etc.**—If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

§ 96. **Proceedings, etc., on appearance of both parties.**—If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for a time not exceeding one year.

§ 97. **Undertaking, when broken.**—An undertaking to keep the peace is broken, on the failure of the person complained of to appear at the court of sessions, as provided in section 94, or upon his being convicted of any crimes involving a breach of the peace.

§ 98. **Undertaking, when and how prosecuted.**—Upon the district attorney producing evidence of such conviction to the court of sessions to which the undertaking is returned, that court must order the undertaking to be prosecuted; and the district attorney must thereupon commence an action upon it in the name of the people of this state.

§ 99. **Security, etc. not required except according to this chapter.**—Security to keep the peace or be of good behavior, can not be required, except as prescribed in this chapter.

Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 285; People *v.* Duffy, 5 Barb. 205; People *v.* Brown, 23 Wend. 47.

CHAPTER III.

POLICE IN CITIES AND VILLAGES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SEC. 100. Organization and regulation of the police.
101. Force to preserve the peace, at public meetings, when and how ordered.

§ 100. Organization and regulation of the police.— The organization and regulation of the police in the cities and villages of this state are governed by special statutes.

§ 101. Public meetings.— The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

CHAPTER IV.

PREVENTION AND SUPPRESSION OF RIOTS.

SEC. 102. Powers of sheriff or other officer, in overcoming resistance to process.
103. His duty to certify to court the names of resisters and their abettors.
104. Duty of a person commanded to aid the officer.
105. When governor to order out a military force, to aid in executing process.
106. Magistrates and officers to command rioters to disperse.
107. To arrest rioters, if they do not disperse.
108. Consequences of refusal to aid the magistrates or officers.
109. Consequences of neglect or refusal of a magistrate or officer to act.
110. Proceedings, if rioters do not disperse.
111. Officers who may order out the military.
112. Commanding officer and troops to obey the order.
113. Armed force to obey orders.
114. Conduct of the troops.
115. Governor may, in certain cases, proclaim a county in a state of insurrection.
116. May call out the militia.
117. May revoke the proclamation.

§ 102. Power of sheriff, etc., in overcoming resistance to process.— When a sheriff or other public officer, authorized to execute process, has reason to apprehend that resistance is about to be made to the execution of the process, he may command as many male inhabitants of his county as he thinks proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

See § 457 of Penal Code; Slater *v.* Wood, 9 Bosw. 16; Elder *v.* Morrison, 10 Wend. 137; Coyle *v.* Hurtin, 10 John. 85; Oystead *v.* Shed, 12 Mass. 511.

§ 103. His duty to certify, etc. — The officer must certify to the court from which the process issued, the names of the resisters and

their aiders and abettors, to the end that they may be proceeded against for contempt.

§ 104. **Duty of a person, etc., to aid the officer.**—Every person commanded by a public officer to assist him in the execution of process, as provided in section one hundred and two, who without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

See § 456 of Penal Code; see cases under § 102, *ante*.

§ 105. **When governor to order out a military force, etc.**—If it appear to the governor, that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, he must, on the application of the sheriff, order such a military force from any other county, or counties, as is necessary.

§ 106. **Magistrates and officers to command rioters to disperse.**—When persons to the number of five or more, armed with dangerous weapons, or to the number of ten or more, whether armed or not, are unlawfully or riotously assembled in a city, village or town, the sheriff of the county and his under-sheriff and deputies, the mayor and aldermen of the city, or the supervisor of the town, or president or chief executive officer of the village, and the justices of the peace or the police justices of the city, village or town, or such of them as can forthwith be collected, must go among the persons assembled, and command them, in the name of the people of the state, immediately to disperse.

§ 107. **To arrest rioters, etc.**—If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, or cause them to be arrested, that they may be punished according to law; and for that purpose, may command the aid of all persons present or within the county.

People *v.* White, 55 Barb. 606; Scott's Case, 2 C. H. Rec. 25; Rodman's Case, id 88

§ 108. **Consequences of refusal to aid, etc.**—If a person so commanded to aid the magistrates or officers, neglect to do so, he is deemed one of the rioters, and is punishable accordingly.

§ 109. **Consequences of neglect or refusal of magistrate or officer to act.**—If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section one hundred and six, neglects to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested

for suppressing the same, and arresting the offenders, he is guilty of a misdemeanor.

§ 110. **Proceedings, if rioters do not disperse.**—If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section one hundred and six, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

§ 111. **Officers who may order out the military.**—When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the state, and the fact is made to appear to the governor, or to a judge of the supreme court, or to a county judge, or to the sheriff of the county, or to the mayor, recorder or city judge of a city, either of those officers may issue an order directed to the commanding officer of a division, brigade, regiment, battalion or company, to order his command, or any part of it (describing the kind and number of troops), to appear at a specified time and place to aid the civil authorities in suppressing violence and enforcing the law.

§ 112. **Commanding officer and troops to obey the order.**—The commanding officer, to whom the order is given, must forthwith obey it; and the troops required must appear at the time and place appointed, armed and equipped with ammunition as for inspection, and render such aid.

§ 113. **Armed force to obey orders.**—When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto, of either of the officers mentioned in section one hundred and eleven.

§ 114. **Conduct of the troops.**—Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

§ 115. **Governor may proclaim, etc.**—When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has

not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney or county judge of the county, by proclamation to be published in the state paper, and in such papers in the county as he may direct, declare the county to be in a state of insurrection.

§ 116. **May call out the militia.**—After the proclamation mentioned in the last section, the governor may order into the service of the state such number and description of volunteer or uniform companies, or other militia of the state, as he deems necessary, to serve for such term, and under the command of such officer or officers as he may direct.

§ 117. **May revoke the proclamation.**—The governor, when he thinks proper, may revoke the proclamation authorized by section one hundred and fifteen, or delare that it shall cease, at the time and in the manner directed by him.

PART III.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT, OR OTHERWISE.

TITLE I. OF IMPEACHMENTS.

II. OF THE REMOVAL OF JUSTICES OF THE PEACE, POLICE JUSTICES, AND JUSTICES OF JUSTICES' COURTS AND THEIR CLERKS.

TITLE I.

Of Impeachments.

SEC. 118. Impeachment to be delivered to president of the senate.
119. Copy of impeachment served on defendant.
120. Service, how made.
121. Proceedings, if defendant do not appear.
122. Defendant may object to sufficiency of, or deny impeachment.
123. Form of objection or denial.
124. Proceedings thereon.
125. Two thirds necessary to conviction.
126. Judgment on conviction, how pronounced.
127. Adoption of resolution.
128. Nature of the judgment.
129. Officer, when impeached, disqualified to act until acquitted.
130. Presiding officer, when president of the senate is impeached.
131. Impeachment, not a bar to indictment.

§ 118. **Impeachment, etc.**—When an officer of the state is impeached by the assembly, the articles of impeachment must be delivered to the president of the senate.

Section 1, art. 6 of St. Const.; § 723 of Penal Code; Addison's trial, 4 Dall. 225; see Barnard's trial.

§ 119. **Copy, etc., served on defendant.**—The president of the senate must thereupon cause a copy of the articles of impeachment, with a notice to appear and answer the same, at the time and place appointed for the meeting of the court, to be served on the defendant, not less than twenty days before the day fixed for the meeting of the court.

§ 120. **Service, etc.**—The service must be upon the defendant personally, or if he can not, upon diligent inquiry, be found in the state, the court, upon proof of that fact, may order publication to be made in such manner as it deems proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

121. **Proceedings, etc.**—If the defendant do not appear, the court, upon proof of service or publication as provided in the last two sections, may of its own motion, or for cause shown, assign another day or place for hearing the impeachment; or may then, or at any other time which it may appoint, proceed in the absence of the defendant, to trial and judgment.

§ 122. **Defendant may object, etc.**—When the defendant appears, he must answer the articles ofi mpeachment; which he may do, either by objecting to their sufficiency, or that of any article therein, or by denying the truth of the same.

§ 123. **Form, etc.**—If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form; it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral, and without oath, and must be entered upon the minutes.

§ 124. **Proceedings thereon.**—If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the court who heard the argument, the defendant must forthwith answer the articles of impeachment. If he plead guilty, or refuse to plead, the court must render judgment of conviction against him. If he deny the matters charged, the court must, at such time as it may appoint, proceed to try the impeachment, and may adjourn the trial from time to time until concluded.

Section 6, art 1 of State Const.; Garling *v.* Van Allen, 55 N. Y. 81; Rathbun *v.* Sawyer, 15 Wend. 451.

§ 125. Two-thirds necessary to conviction.—The defendant can not be convicted on an impeachment, without the concurrence of two-thirds of the members present during the trial; and if such two-thirds do not concur in a conviction, the defendant must be declared acquitted.

Art. 6, § 1, N. Y. Const.

§ 126. Judgment, etc., how pronounced. — After conviction, the court must immediately, or at such other time as it may appoint, pronounce judgment, in the form of a resolution, entered upon the minutes of the court. The vote upon the passage thereof must be taken by yeas and nays, and must also be entered upon the minutes.

§ 127. Adoption of resolution.—On the adoption of the resolution, by a majority of the members present, who voted on the question of acquittal or conviction, it becomes the judgment of the court.

§ 128. Nature of the judgment.—Upon conviction, the judgment must be either

1. That the defendant be removed from office; or
2. That he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of profit, trust or honor whatever under this state.

Section 1, art. 6 of State Const.; Barker v. People, 20 John. 457; 3 Cow. 686; 2 Wheeler Cr. Cases, 19.

§ 129. Officer, when impeached, etc.— No officer shall exercise his office, after articles of impeachment against him shall have been delivered to the senate, until he is acquitted.

Art. 6, § 1, N. Y. Const.

§ 130. Presiding officer, when president of the senate is impeached.—If the president of the senate be impeached, notice of the impeachment must be immediately given to the senate by the assembly, that another president may be chosen.

§ 131. Impeachment not a bar to indictment.—If the offense for which the defendant is impeached be a crime, the prosecution thereof is not barred by the impeachment.

Art. 6, § 1, N. Y. Const.

TITLE II.

Of the Removal of Justices of the Peace, Police Justices, and Justices of Justices' Courts and their Clerks.

§ 132. Removals.— Justices of the peace, police justices, justices of justices' courts, and their clerks, are removable by the supreme court at a general term.

Art. 6, § 18, N. Y. Const.; Matter of King, 25 N. Y. St. Rep. 794; 6 N. Y. Supp 421; Wenzler v. People, 58 N. Y. 516; Coulter v. Murray, 15 Abb. (N. S.) 129; People v. Shea, 7 Hun, 309; People v. Keeler, 17 N. Y. 330.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

TITLE I. OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.
II. OF THE TIME OF COMMENCING CRIMINAL ACTIONS.
III. OF THE INFORMATION, AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.
IV. OF THE PROCEEDINGS AFTER COMMITMENT, AND BEFORE INDICTMENT.
V. OF THE INDICTMENT.
VI. OF THE PROCEEDINGS ON THE INDICTMENT BEFORE TRIAL.
VII. OF THE TRIAL.
VIII. OF THE PROCEEDINGS AFTER TRIAL, AND BEFORE JUDGMENT.
IX. OF THE JUDGMENT AND EXECUTION.
X. GENERAL PROVISIONS RELATING TO PUNISHMENT OF CRIME.
XI. OF APPEALS.
XII. OF MISCELLANEOUS PROCEEDINGS.

TITLE I.

Of the Local Jurisdiction of Public Offenses.

SEC. 133. When a person leaves this state to elude its law.
134. When a crime is committed partly in one county and partly in another.
135. When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof.
136. Jurisdiction of crime on board of vessel.
137. Of crime committed in the state on board of any railway train, etc.
138. Indictment for libel.
139. Conviction or acquittal in another state, a bar, where the jurisdiction is concurrent.
140. Conviction or acquittal in another county, a bar, where the jurisdiction is concurrent.

§ 133. When a person leaves this state to elude its laws.— A person who leaves this state, with intent to elude any law thereof against duelling or prize-fighting, or challenges thereto, or to do any act for-

bidden by such a law, or, who being a resident of this state, does an act out of it, which would be punishable as a violation of such a law, may be indicted and tried in any county of this state.

People v. Lyon, 99 N. Y. 219; 1 N. Y. Cr. 400; People v. Blivin, 112 N. Y. 79; Adams v. People, 1 id. 173.

§ 134. When a crime is committed, etc. — When a crime is committed, partly in one county and partly in another, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

See People v. Mason, 9 Wend 505. False pretenses. People v. Sully, 1 Sheld. 17. Bigamy. King v. People, 5 Hun, 297. Burglary. Mack v. People, 82 N. Y. 235 Receiving stolen goods. People v. Dowling, 84 N. Y. 478. Contempt. People v. Sherwin, 17 W. D. 125. Matter of McFarland, 59 Hun, 306; People v. Dimick, 107 N. Y. 33; 5 N. Y. Cr. 201; People v. Crotty, 30 N. Y. St. Rep 45; 9 N. Y. Supp. 937.

§ 135. When a crime is committed on the boundary, etc.—When a crime is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Does not include special sessions. People v. Bates, 38 Hun, 180; 4 N. Y. Cr. 216; People v. Davis, 56 N. Y. 95; 36 id. 77; State v. Lowe, 21 W. Va. 783; 45 Am. Rep. 570; Archer v State, 34 Alb. L. J. 50.

§ 136. Jurisdiction of crime on board a vessel.— When a crime is committed in this state on board of a vessel navigating a river, lake, or canal, or lying therein in the course of her voyage, or in respect to any portion of the cargo or lading of such boat or vessel, the jurisdiction is in any county through which, or any part of which, such river or canal passes, or in which such lake is situated, or on which it borders, or in the county where such voyage terminates, or would terminate if completed.

See People v. Hulse, 3 Hill, 309; People v. Marine Ct. 6 Hun, 214; Larkin v. People, 61 Barb. 226; Haskins v. People, 16 N. Y. 344; Manly v. People, 7 id. 295.

§ 137. Of crime committed, etc. — When a crime is committed in this state, in or on board of any railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway train or engine car, the jurisdiction is in any county through which, or any part of which, the railway train or car passes, or has passed in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed.

See Dowling v. People, 23 Alb. L. J. 353; 84 N. Y. 478.

§ 138. **Indictment for libel.**— When a crime of libel is committed by publication in any paper in this state, against a person residing in the state, the jurisdiction is in either the county where the paper is published, or in the county where the party libeled resides. But the defendant may have the place of trial changed to the county where the libel is printed, on executing a bond to the complainant in the penal sum of not less than $250, nor more than $1,000, conditioned, in case the defendant is convicted, for the payment of the complainant's reasonable and necessary traveling expenses in going to and from his place of residence and the place of trial, and his necessary expenses in attendance thereon, which bond must be signed by two sufficient sureties, to be approved by the judge of a court of record exercising criminal jurisdiction.

Whenever the crime of libel is committed against a person not a resident of this state, the defendant must be indicted and the trial thereof had in the county where the libel is printed and published. But if the paper does not, upon its face, purport to be printed or published in a particular county of this state, the defendant may be indicted and the trial thereof had in any county where the paper is circulated. In no case however can the defendant be indicted for the printing or publication of one libel in more than one county of this state.

See § 249 of Penal Code.

§ 139 **Conviction or acquittal in another state, a bar, etc.**—When an act charged as a crime is within the jurisdiction of another state, territory or country, as well as within the jurisdiction of this state, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this state.

A crime may be committed, amenable to the jurisdiction of the state, without the defendant's presence therein. People *v.* Adams, 3 Den. 190; 1 N. Y. 173. See § 679 of Penal Code; Fifth Amend. Fed. Const.

§ 140. **Conviction or acquittal in another county, a bar, etc.** — When a crime is within the jurisdiction of two or more counties of this state, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

TITLE II.

Of the Time of Commencing Criminal Actions.

Sec. 141. Prosecution for murder may be commenced at any time.
142. Limitation of five years.
143. Defendant out of state.
144. Indictment deemed found, when presented in court and filed.

§ 141. **Prosecution for murder, etc.**—There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Applicable to an accessory before the fact. People *v.* Mather. 4 Wend. 229. Conviction for assault, etc., no bar to indictment for murder. Burns *v.* People, 1 Park 182. People *v.* Dowling, 1 N. Y. Cr. 529.

§ 142. **Limitation, etc.**—An indictment for a *felony*, other than murder, must be found within five years after its commission, except where a less time is prescribed by statute. *And an indictment for misdemeanor must be found within two years after its commission.* [AM'D CH. 412 OF 1887.]

No lapse of time legalizes a public nuisance. People *v.* Cunningham, 1 Den. 524. Construction of statute. People *v.* Lord, 12 Hun, 282; 2 N. Y. Cr. 29. Delay. Ib. 45. People *v.* Dowling, 1 N. Y. Cr. 529; People *v.* Durrin, 2 id. 328; People *v.* O'Donnell, 46 Hun, 362.

§ 143. **Defendant out of state.**— If, when the crime is committed, the defendant be out of the state, the indictment may be found within the term herein limited after his coming within the state; and no time, during which the defendant is not an inhabitant of, or usually resident within, the state, is part of the limitation.

People *v.* Durrin, 2 N. Y. Cr. 328.

§ 144. **Indictment deemed found, etc.**—An indictment is found, within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed.

TITLE III.

Of the Information and Proceedings thereon to the Commitment inclusive.

CHAPTER I. The information.
II. The warrant of arrest.
III. Arrest by an officer, under a warrant.
IV. Arrest by an officer, without a warrant.
V. Arrest by a private person.
VI. Retaking, after an escape or rescue.
VII. Examination of the case, and discharge of the defendant or holding him to answer.

CHAPTER I.

THE INFORMATION.

SEC. 145. Information defined.
146. Magistrate, defined.
147. Who are magistrates.

§ 145. **Information defined.**— The information is the allegation made to a magistrate, that a person has been guilty of some designated crime.

People v. Nowak, 1 Sil. (S.C.) 412; People v. Johnson, 46 Hun, 671; People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; matter of Ramscar, 1 N. Y. Cr. 36; 10 Abb. N. C. 442; 63 How. 255; People ex. rel. Baker v. Beatty, 39 Hun, 477.

§ 146. **Magistrate, defined.**— A magistrate is an officer, having power to issue a warrant for the arrest of a person charged with a crime.

People v. Nowak, 1 Sil. (S. C.) 412; Killoran v. Barton, 26 Hun, 648.

§ 147. **Who are magistrates.**— The following persons are magistrates:

1. The justices of the supreme court.
2. The judges of any city court.
3. The county judges and special county judges.
4. The city judge of the city of New York, and the judges of the court of general sessions in the city and county of New York.
5. The justices of the peace.
6. The police and other special justices appointed or elected in a city, village or town.
7. The mayors and recorders of cities. [But in the city of New York, the only magistrates authorized to commit children to institutions, are the justices of the supreme court, the recorder, the city judge of the city of New York, and judges authorized to hold the court of general sessions, and the police justices.] [AM'D CH. 279 of 1892. In effect Sept. 1, 1892.]

People v. Nowak, 1 Sil. (S. C.) 412; People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; Killoran v. Barton, 26 Hun, 648; People v. Bates, 38 Hun, 181; 4 N. Y. Cr. 215; People ex. rel. Lynch v. Duffy, 46 Hun, 276; Matter of McFarland, 59 Hun, 306; Subd. 7, Hommert v. Gleason, 38 N. Y. St. Rep. 343.

CHAPTER II.

THE WARRANT OF ARREST.

SEC. 148. Examination of the prosecutor, and his witnesses, upon the information.
149. Depositions, what to contain.
150. In what case warrant of arrest may be issued.
151. Form of the warrant.
152. Name or description of the defendant, in the warrant and statement of the offense
153. Warrant to be directed to and executed by a peace officer.
154. Who are peace officers.
155. Warrant issued by certain judges.
156. Id.; by other magistrates.
157. Indorsement on the warrant for service in another county, how and upon what proof to be made.
158. Defendant, arrested for felony.
159. Defendant, arrested for a misdemeanor.

SEC. 160. Proceedings on taking bail from the defendant, in such case
161. Proceedings, where he is admitted to bail in such case, but bail is not given.
162. Prisoner carried from county to county.
163. Power and privilege of officer.
164. When magistrate issuing the warrant is unable to act.
165. Defendant in all cases to be taken before a magistrate, without delay.
166. Defendant before another magistrate than the one who issued the warrant.

§ 148. Examination of the prosecutor, etc.—When an information is laid before a magistrate, of the commission of a crime, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

People *v.* Nowak, 1 Sil. (S. C.) 412; Tracey *v.* Seamans, 7 N. Y. St. Rep. 145; Ex parte Boswell, 34 How. 347; Sleight *v.* Ogle, 4 E. D. Smith, 445; Payne *v.* Barnes, 5 Barb. 465; People *v.* Winness; 3 N. Y. Cr. 89; Pierson *v.* People, 79 N. Y. 424; Kalloch *v.* Supr. Ct. 56 Cal. 229

§ 149. Depositions, what to contain.—The depositions must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the crime and the guilt of the defendant.

What must be set forth. People ex rel. Kingsley *v.* Pratt, 22 Hun, 300; Loomis *v.* Render, 41 Hun, 269; Tracey *v.* Seamans, 7 N. Y. St. Rep. 145; Matter of Rothaker, 11 Abb. N. C. 122; People *v.* McIntosh, 5 N. Y. Cr. 38.

§ 150. In what case warrant of arrest may be issued.—If the magistrate be satisfied therefrom, that the crime complained of has been committed, and that there is reasonable ground to believe that the defendant has commited it, he must issue a warrant of arrest.

What sufficient. Blodgett *v.* Race, 18 Hun, 132. Ex parte Rothaker, 11 Abb. N. C. 122; People *v.* Mead, 28 Hun, 227; s. c., 92 N. Y. 415. People *v.* McIntosh, 5 N. Y. Cr. 40; Fraser *v.* Board, etc., 17 N. Y St. Rep. 875; Tracy *v.* Seamans, 7 id. 145; Killoran *v.* Barton, 26 Hun, 648; Wilkinson *v.* Robinson, 6 How. 110; Halley *v.* Mix, 3 Wend. 350; Abbott *v.* Booth, 50 Barb. 551; Pratt *v.* Bogardus, 49 id. 89; Stewart *v.* Hawley, 21 Wend. 553; Campbell *v.* Ewalt, 7 How. 399.

§ 151. Form of the warrant.—A warrant of arrest is an order in writing in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

"County of *Albany*, [or as the case may be.]

In the name of the people of the state of New York. To any peace officer in this state [or in the county of *Albany*, or as the case may be, as provided in sections 155 and 156.]

"Information upon oath having been this day laid before me, that the crime of [designating it] has been committed, and accusing C. D. thereof.

"You are therefore commanded, forthwith to arrest the above named C. D., and bring him before me, at— [naming the place,] or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

"Dated at the *City of Albany*, [or as the case may be,] this day of , 18 .

E. F., *Justice of the peace*,
[or as the case may be]."

Fraser *v.* Board, etc., 17 N. Y. St. Rep. 875; People *v.* Upton, 29 id. 778; People *v.* Johnson, 46 Hun, 671; Killoran *v.* Barton, 26 id. 648; People *v.* Mead, 92 N. Y. 420.

§ 152. **Name or description of defendant, etc.**—The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant, and the time of issuing it, and the city, town or village, where it is issued, and be signed by the magistrate with his name of office.

People *v.* Upton, 29 N. Y. St. Rep. 778; People ex rel. Baker *v.* Beatty, 39 Hun, 476; 4 N. Y. Cr. 288; Tracy *v.* Seamans, 7 N. Y. St. Rep. 147; 26 W. Dig. 117; Payne *v.* Barnes, 5 Barb. 465; Pratt *v.* Bogardus, 49 id. 87; Miller *v.* Foley, 28 id. 630; Atchinson *v.* Spencer, 9 Wend. 62; Beekman *v.* Traver, 20 id. 77; Smith *v.* Randall, 8 Hill, 495; People *v.* Holcomb, 3 Park. 656; Blythe *v.* Tompkins, 2 Abb. 468; People v. McLeod, 1 Hill, 377.

§ 153. **Warrant, to be directed to and executed, etc.**—The warrant must be directed to, and executed by, a peace officer.

Warrant not directed to proper officers is void. Russell *v.* Hubbard, 6 Barb. 654; Abbott *v.* Booth, 51 id. 546; People *v.* Shaver, 4 Park. 45.

§ 154. **Who are peace officers.**—A peace officer is a sheriff of a county, or his under-sheriff or deputy, or a constable, marshal, police constable or policeman of a city, town or village.

§ 155. **Warrant issued by certain judges.**—If the warrant be issued by a judge of the supreme court, or of the superior court, or court of common pleas, recorder, city judge or judge of a court of general sessions in the city and county of New York, or by a county judge, or by a judge of the city court, it may be directed generally to any peace officer in the state, and may be executed by any of those officers to whom it may be delivered.

Moak *v.* De Forrest, 5 Hill, 607.

§ 156. **Id.; by other magistrates.**— If it be issued by any other magistrate, it may be directed generally to any peace officer in the county in which it is issued, and may be executed in that county;

or if the defendant be in another county, it may be executed therein, upon the written direction of a magistrate of such other county indorsed upon the warrant, signed by him, with his name of office, and dated at the city, town or village where it is made, to the following effect: This warrant may be executed in the county of *Monroe*, [or as the case may be.]

People *v.* Cassels, 5 Hill, 167, 607; Butolph *v.* Blust, 5 Lans. 84; Doyle *v.* Russell, 30 Barb. 300; Green *v.* Rumsey, 2 Wend. 611; People *v.* Clews, 77 N. Y. 39; People ex. rel. *v.* Chapman, 30 How. 202; Clark *v.* Cleveland, 6 Hill, 344.

§ 157. **Indorsement on the warrant, etc.** — The indorsement mentioned in the last section can not, however, be made, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly issued.

See cases under last section.

§ 158. **Defendant, arrested for felony.**— If the crime charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county, as provided in section 164.

Fraser *v.* Board, etc. 17 N. Y. St. Rep. 875; People *v.* Frink, 41 Hun, 198; 24 W. Dig. 569; Tracey *v.* Seamans, 7 N. Y. St. Rep 145; 26 W. Dig. 117; People *v.* Clews, 77 N. Y. 39; People *v.* Chapman, 30 How. 202; People *v.* Navagh, 4 N. Y. Cr. 297.

§ 159. **Defendant, arrested for a misdemeanor.**— If the crime charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, for his appearance before the magistrate named in the warrant, and take bail from him accordingly.

People *v.* Clews, 77 N. Y. 39; People *v.* Chapman, 30 How. 202.

§ 160. **Proceedings on taking bail, etc.**—On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and, without delay, deliver the warrant and undertaking to the magistrate before whom the defendant is required to appear.

§ 161. **Proceedings where, etc., but bail is not given.**—If, on the admission of the defendant to bail, as provided in section 159, bail be not forthwith given, the officer must take the defendant before

the magistrate who issued the warrant, or some other magistrate in the same county, as provided in section 164.

Fraser v. Board, etc. 17 N. Y. St. Rep. 875.

§ 162. **Prisoner carried from county to county.** — An officer who has arrested a defendant on a criminal charge, in any county, may carry such prisoner through such parts of any county or counties as shall be in the ordinary route of travel from the place where the prisoner shall have been arrested, to the place where he is to be conveyed and delivered under the process by which the arrest shall have been made; and such conveyance shall not be deemed an escape.

Love v. Humphrey, 9 Wend. 204.

§ 163. **Power and privilege of officer.**— While passing through such other county or counties, the officers having the prisoner in their charge shall not be liable to arrest on civil process; and they shall have the like power to require any citizen to aid in securing such prisoner, and to retake him if he escapes, as if they were in their own county; and a refusal or neglect to render such aid shall be an offense in the same manner as if they were officers of the county where such aid shall be required.

§ 164. **When magistrate issuing the warrant is unable to act.**— When, by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if that magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to the magistrate the warrant with his return indorsed and subscribed by him.

Fraser v. Board, etc. 17 N. Y. State Rep. 875; People v. Frink, 41 Hun, 193; People v. Chapman, 30 How. 202; People v. Clews, 77 N. Y. 39; People v. Navagh, 4 N. Y. Cr. 297; 41 Hun, 188.

§ 165. **Defendant in all cases to be taken before a magistrate without delay.** — The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night. [Am'd Ch. 694 of 1887.]

Can not commit defendant for future hearing until he is brought before court. Pratt v. Hill, 16 Barb. 303. Arnold v. Steever, 10 Wend. 514; Hawley v. Butler, 48 Barb. 101.

§ 166. **Defendant before another magistrate than the one who issued warrant.**—If the defendant be taken before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or if they

can not be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

CHAPTER III.

ARREST BY AN OFFICER UNDER A WARRANT.

SEC. 167. Arrest defined.
168. By whom an arrest may be made.
169. Every person bound to aid an officer in an arrest.
170. When the arrest may be made.
171. How an arrest is made.
172. No further restraint allowed than is necessary.
173. Officer must state his authority, and show warrant, if required.
174. If defendant flee or resist, officer may use all necessary means to effect arrest.
175, 176. When officer may break open a door or window.

§ 167. Arrest defined.—Arrest is the taking of a person into custody that he may be held to answer for a crime.

Illegal arrest. People *v.* Rowe, 1 Sheld. 561. Searls *v.* Vieta, 2 T. & C. 296; People *v.* Shanley, 40 Hun, 477; 4 N. Y. Cr. 72.

§ 168. Who may arrest.—An arrest may be,

1. By a peace officer, under a warrant;
2. By a peace officer, without a warrant; or
3. By a private person.

People *v.* Shanley, 40 Hun, 477; 4 N. Y. Cr. 72.

§ 169. Every person bound to aid, etc.—Every person must aid an officer in the execution of a warrant, if the officer require his aid and be present and acting in its execution.

Elder *v.* Morrison, 10 Wend. 137; Coyles *v.* Hurtin, 10 John. 85.

§ 170. When the arrest may be made.—If the crime charged be a felony, the arrest may be made on any day, and at any time of the day or during any night. If it be a misdemeanor the arrest can not be made on Sunday, or at night, unless by direction of the magistrate indorsed upon the warrant.

Murphy *v.* Kron, 20 Abb. N. C. 259; 8 N. Y. St. Rep. 230.

§ 171. How an arrest is made.—An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Campbell *v.* Kelley, 20 W. Dig. 160; Gold *v.* Bissell, 1 Wend. 210.

§ 172. No further restraint allowed than is necessary.—The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

§ 173. Officer must state authority, and show warrant, etc.—The defendant must be informed by the officer that he acts under the authority of the warrant, and he must also show the warrant, if required.

People v. Shanley, 40 Hun, 478; 4 N. Y. Cr. 72.

§ 174. If defendant, etc., resist, officer may use all necessary means to effect arrest.—If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Conraddy v. People, 5 Park. 234. Brooks v. Com. 61 Penn. St. 352; Mesoner v. Com. 26 Gratt. 976.

§ 175. When officer may break open a door or window.—The officer may break open an outer or inner door or window of any building, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

See § 178, *post*; § 223 of Penal Code. Bell v. Clapp, 10 John. 265; Murphy v. Kron, 20 Abb. N. C. 259; note in 21 id. 27.

§ 176. Id.—An officer may break open an outer or inner door or window of any building, for the purpose of liberating a person, who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

CHAPTER IV.

ARREST BY AN OFFICER, WITHOUT A WARRANT.

SEC. 177. In what cases allowed.
178. May break open a door or window, if admittance refused.
179. May arrest at night, on reasonable suspicion of felony.
180. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.
181. May take before a magistrate, a person arrested by a by-stander for breach of the peace.
182. Magistrate may commit by verbal or written order, for offenses committed in his presence.

§ 177. In what cases allowed.—A peace officer may, without a warrant, arrest a person,

1. For a crime, committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence;

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.

See People ex rel. Kingsley v. Pratt, 22 Hun, 300; Burns v Erben, 40 N. Y. 463; Schneider v. McLane, 3 Keyes, 563; Harft v. McDonald, 1 C C. R. 181; Meyer v. Clark, 9 J. & Sp. 107; Stemack v. Brooks, 7 Daly, 142; People v. Pratt, 22 Hun, 300; McIntyre v. Radmus, 14 J. & Sp. 123; Hawley v. Butler, 54 Barb. 490; 48 id. 101; Sands v. Benedict, 2 Hun, 479; 5 T. & C. 19; People v. Shanley, 40 Hun, 478; 4 N. Y. Cr. 72; People v. Adler, 3 Park. 249; Carpenter v. Mills, 29 How. 473; Willis v. Warren, 17 id. 100; Henessey v. Conolly, 13 Hun, 173; Butolph v. Blust, 41 How. 481; Phillips v. Trull, 11 Johns. 486; Coyles v. Hurtin, 10 id. 85; Brown v. Chadsey, 39 Barb. 253; Wilson v. King, 39 Supr. 384; Matter of Henry, 29 How. 187; Slater v. Wood, 9 Bosw. 15; Tupper v. Morin, 20 Abb. N. C. 402; Smith v. Botens, 37 N. Y. St. Rep. 54.

§ 178. **May break, etc., if admittance refused.**—To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a building, if after notice of his office and purpose, he be refused admittance.

See § 173, *ante*.

§ 179. **May arrest at night, etc.**—He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had been committed, but that the person arrested did not commit it.

People v. Ryan, 28 N. Y. St. Rep. 490; People v. McCarthy, 110 N. Y. 309.

§ 180. **Must state authority, etc.**—When arresting a person without a warrant the officer must inform him of the authority of the officer and the cause of the arrest, except when the person arrested is in the actual commission of a crime, or is pursued immediately after an escape.

§ 181. **May take, etc., a person arrested by a by-stander for breach of the peace.**—A peace officer may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a by-stander and delivered to him.

Wark's Case, 5 C. H. Rec. 4.

§ 182. **Magistrate may commit, etc.**—When a crime is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Order can not be delayed. McKay's Case, 5 C. H. Rec 95; see Butolph v. Blust, 5 Lans. 84; Sands v. Benedict, 2 Hun, 479; Lindsay v. People, 67 Barb. 548; Farrell v. Warren, 3 Wend. 253; Parsons v. Brainard, 17 id. 522.

CHAPTER V.

ARREST BY A PRIVATE PERSON.

SEC. 183. In what cases allowed.
184. Must inform the party of the cause of arrest, except when actually committing the offense or on pursuit after escape.
185. Must immediately take prisoner before a magistrate, or deliver him to a peace officer.

§ 183. **In what cases allowed.** — A private person may arrest another,

1. For a crime, committed or attempted in his presence;

2. When the person arrested has committed a felony, although not in his presence.

Subd. 1; Phillips v. Trull, 11 Johns. 468; People v. Morehouse, 2 Sil. (S. C.) 242; Judson v. Reardon, 16 Minn. 431; Keenan v. State, 8 Wis. 132; Long v. State, 12 Ga. 293. Subd. 2; Holley v. Mix, 3 Wend. 350; People v. Adler, 2 Park. 249; Brown v. Chadsey, 39 Barb. 253; Hawley v. Butler, 54 id. 490; 48 id. 101; Burns v. Erben, 40 N. Y. 463; State v. Bryant, 65 N. C. 327; Habersham v. State, 56 Ga. 61; Doering v. State, 49 Ind. 56; see Smith v. Botens, 36 N. Y. St. Rep. 54; 2 City Ct. 240, n.

§ 184. **Must inform party of the cause of arrest, except when actually committing offense, etc.**— A private person before making an arrest, must inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the crime, or when he is arrested on pursuit immediately after its commission.

State v. Bryant, 65 N. C. 327; State v. Belk, 76 id. 10; People v. Pool, 27 Cal. 572; People v. Morehouse, 2 Sil. (S. C.) 240.

§ 185. **Must immediately take prisoner before a magistrate, or deliver him to a peace officer.**— A private person, who has arrested another for the commission of a crime, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

Com. v. Sheriff, 1 Grant, 187; Cooper v. Adams, 2 Blackf. 294.

CHAPTER VI.

RETAKING, AFTER AN ESCAPE OR RESCUE.

SEC. 186. May be at any time, or in any place in the state.
187. May break open a door or window, if admittance refused.

§ 186. **May be at any time, or in any place in the state.**— If a person arrested escape or be rescued, the person, from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the state.

§ 187. **May break, etc., if admittance refused.**— To retake the person escaping or rescued, the person pursuing may, after notice of

his intention and refusal of admittance, break open an outer or inner door or window of a building.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

SEC. 188. Magistrate to inform defendant of the charge, and his right to counsel.
189. Time to send, and sending for counsel.
190. On appearance of counsel, or waiting for him a reasonable time examination to proceed.
191. When to be completed; adjournment.
192. On adjournment, defendant to be committed, or discharged on deposit of money.
193. Form of commitment.
194. Depositions, to be read on examination, and witnesses examined.
195. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf
196. Defendant to be informed of his right to make a satement.
197. Waiver of his right, and its effect.
198, 199. Statement, how taken.
200. How reduced to writing, and authenticated.
201. After statement or waiver, defendant's witnesses to be examined.
202. Witnesses to be kept apart.
203. Who may be present at examination.
204. Testimony, how taken and authenticated.
205. Depositions and statement, how and by whom kept.
206. Defendant entitled to copies of depositions and statement.
207. Defendant, when and how to be discharged.
208. When and how to be committed.
209. Order for commitment.
210. Certificate of bail being taken.
211. Defendant to choose how he shall be tried.
212. Order for bail, on commitment.
213, 214. Form of commitment.
215. Undertaking of witnesses to appear, when and how taken.
216. Security for appearance of witnesses, when and how required.
217. Infants and married women may be required to give security for appearance as witnesses.
218. Witness to be committed, on refusal to give security for appearance.
219. Witness, unable to give security, may be conditionally examined.
220. Last section not applicable to prosecutor or accomplice.
221. Magistrate to return depositions, statement and undertakings of witnesses to the court.

§ 188. Magistrate to inform defendant of the charge, and his right to counsel.—When the defendant is brought before a magistrate upon an arrest either with or without warrant on a charge of having committed a crime, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

Hearing after coroner's inquisition. See § 6, art. 1 of State Const.; § 8, *ante*. People *v.* Cook, 45 Hun, 36; Matter of Ramsear, 38 Hun, 191; 1 N. Y. Cr. 33; 63 How. 255; People ex rel. Baker *v.* Beatty, 39 Hun, 477; People *v.* McGloin, 91 N. Y. 241; 12 Abb. N. C. 72; People *v.* Mondon, 103 N. Y. 211; 4 N. Y. Cr. 561; 34 Alb. L. J. 436; People *v.* Chapleau, 121 N. Y. 266; Hommert *v.* Gleason, 38 N. Y. St. Rep. 343; People ex rel. Navagh *v.* Frink, 41 Hun, 195.

§ 189. Time to send, and sending for counsel.—He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the town or city, as the defendant may name. The officer must, without delay and without fee, perform that duty.

People v. Restell, 3 Hill, 289; Cases under last section.

§ 190. On appearance of counsel, or waiting for him a reasonable time, examination to proceed.— The magistrate, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, must, after waiting a reasonable time therefor, proceed to examine the case, unless the defendant waives examination and elects to give bail, in which case the magistrate must admit the defendant to bail if the crime is bailable, as provided in section two hundred and ten; and in that case witnesses in attendance or shown to be material for the people may be required to appear and testify, or to be examined conditionally as prescribed in sections two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, two hundred and eighteen, two hundred and nineteen and two hundred and twenty.

See cases under § 188, *ante*. People v. Milne, 41 Hun, 188.

§ 191. When to be completed — Adjournment.— The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment can not be for more than two days at each time, unless, by consent or on motion of the defendant.

Can not commit defendant for hearing on future day until brought before court. Pratt v. Hill, 16 Barb. 303. Indictment does not oust jurisdiction. Ex parte Gessner, 53 How. Pr. 515; reversed and held may indict pending examination; People v. Westbrook, 12 Hun, 646; People v. Drury, 2 Edm. S. C. 351. Ex parte Smith, 5 Cow. 273; People v. Nash, 5 Park. 473; People v. Mondon, 103 N. Y. 221; reversing, 38 Hun, 191; People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W'k Dig. 255; affirming, 28 Hun, 150; 1 N. Y. Cr. 105; 16 W'k Dig. 138.

§ 192. On adjournment, to be committed or discharged, etc.— If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody, upon his giving bail to appear during the examination, or upon the deposit of money as provided in this Code, to make sure of his appearance at the time to which the examination is adjourned.

People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W'k Dig. 255; affirming, 28 Hun, 150; 1 N. Y. Cr. 105; 16 W'k Dig. 138; People v. Mondon, 103 N. Y. 221; reversing, 38 Hun, 191; People ex rel. Gilbert v. Laidlaw, 102 N. Y. 590.

§ 193. Form of commitment.— The commitment for examination is by an indorsement signed by the magistrate, on the warrant of arrest, to the following effect: "The within named A. B., having been brought before me under this warrant, is committed for examination, to the sheriff of the county of ," or in the city and county of New York, "to the keeper of the city prison of the city of New York."

People *v.* McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; affirming, 28 Hun, 150; 1 N. Y. Cr. 105; 16 W. Dig. 138.

§ 194. Depositions to be read, etc., and witnesses examined.—At the examination, the magistrate must, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information, and if the defendant request it, or elects to have the examination, must summon for cross-examination the witnesses so examined, if they be in the county. He must also issue subpœnas for additional witnesses required by the prosecutor or the defendant.

People *v.* McGloin, 91 N Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; affirming, 28 Hun, 150; 1 N. Y. Cr. 105; 16 W. Dig. 138; Matter of Paul, 94 N. Y. 502; 2 N. Y. Cr. 6; People *v.* Restell, 2 Hill, 289; Son *v.* People, 12 Wend. 344.

§ 195. Examination of witnesses to be in presence of defendant, etc.— The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

People *v.* Williams, 35 Hun, 516; People *v.* McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; affirming, 28 Hun, 150; 1 N. Y. Cr. 105; 16 W. Dig. 138; Matter of Paul, 94 N. Y. 502; 2 N. Y. Cr. 6; People *v.* Restell, 3 Hill, 289; Beebe *v.* People, 5 id. 33; People *v.* Newman, id. 295.

§ 196. Defendant to be informed of his right to make a statement.— When the examination of the witnesses on the part of the people is closed, the magistrate must inform the defendant, that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he see fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive making a statement; and that his waiver can not be used against him on the trial.

People *v.* McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N Y. Cr. 154; 16 W. Dig. 225; affirming, 28 Hun, 150; 1 N. Y. Cr. 105; 16 W. Dig. 138; People *v.* Mondon, 103 N. Y. 221; 4 N. Y. Cr. 561; People *v.* Chapleau, 121 N. Y. 266; People *v.* Hendrickson, 1 Park. 416; People *v.* McMahon, 2 id. 669; People *v.* Stott, 4 N. Y. Cr. 306; 5 id. 61.

§ 197. Waiver of his right and its effect.— If the defendant waive his right to make a statement, the magistrate must make a note thereof, immediately following the depositions of the witnesses against the defendant.

People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; affirming, 28 Hun, 150; 1 N. Y. 105; 16 W. Dig. 138; People v. Mondon, 103 N. Y. 221; 4. N. Y. Cr. 561.

§ 198. **Statement, how taken.**—If the defendant choose to make a statement, the magistrate must proceed to take it in writing, without oath, and must put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you may think proper, of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; affirming, 28 Hun, 150; 1. N. Y. Cr. 105; 16 W. Dig. 138; People v. Mondon, 103 N. Y. 221; 4 N. Y. Cr. 561; Matter of Boswell, 34 How. 347; Bellinger v. People, 8 Wend. 595; People v. Moore, 15 id. 419; People v. Stott, 4 N. Y. Cr. 106; 5 id. 61.

§ 199. Id.—The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it must be corrected until it is made conformable to what he declares to be the truth.

People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; aff'g 28 Hun, 150; 1 N. Y. Cr. 105; 16 W. Dig. 138; People v. Mondon, 103 N. Y. 221; 4 N. Y. Cr. 561.

§ 200. **How reduced to writing and authenticated.**—The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following manner:

1. The authentication must set forth in detail, that the defendant was informed of his rights as provided in section 196, and that after being so informed, he made the statement;

2. It must contain the questions put to him, and his answers thereto, as provided in sections 198 and 199;

3. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign, his reason therefor must be stated as he gives it;

4. It must be signed and certified by the magistrate.

People v. Restell, 3 Hill, 289; People v. McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 154; 16 W. Dig. 255; affirming, 28 Hun, 150; 1 N. Y. 105; 16 W. D. 138; People v. Moore, 15 Wend. 419; People v. Webster, 3 Park. 503; 14 How. 242; People v. Winness, 3 N. Y. Cr. 89; People v. Chapleau, 121 N. Y. 266.

§ 201. **After statement or waiver, etc**—After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

§ 202. Witnesses to be kept apart.—The witnesses produced on the part either of the people or of the defendant can not be present at the examination of the defendant; and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other, until they are all examined.

See 16 Am. St. 25; State v. Lockwood, 5 E. R. 56; § 432, 1 Greenl. Ev. (14th ed.).

§ 203. Who may be present at examination.—The magistrate *may* also, exclude from the examination every person except the clerk of the magistrate, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel and the officer having the defendant in custody. [AM'D CH. 220 OF 1888.]

§ 204. Testimony, how taken and authenticated.—The testimony given by each witness must be reduced to writing, as a deposition, by the magistrate or under his direction, and authenticated in the following manner:

1. The authentication must state the name and age of the witness, his place of residence, and his business or profession.

2. It must, unless deposition by question and answer be waived by the defendant and the witness, contain the questions put to the witness, and his answers thereto; each answer being distinctly read to him as it is taken down, and being corrected or added to, until it is made conformable to what he declares to be the truth.

3. If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it.

5. It must be signed and certified by the magistrate.

People v. Winness, 3 N. Y. Cr. 89; People v. Johnson, 46 Hun, 671.

§ 205. Depositions, etc.—The magistrate or his clerk must keep the depositions taken on the information or on the examination, and the statement of the defendant, if any, until they are returned to the proper court; and must not permit them to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney-general, the district attorney of the county, the

defendant and his counsel *and the complainant and his counsel.* [AM'D CH. 220 OF 1888.]

People v. Johnson, 46 Hun, 671.

§ 206. **Defendant entitled to copies, etc.**—If the defendant be held to answer the charge, the magistrate or his clerk having the custody of the depositions taken on the information or examination, and of the statement of the defendant, must, on payment of his fees at the rate of five cents for every hundred words, and within two days after demand, furnish to the defendant, or his counsel, a copy of the depositions and statement, or permit either of them to take a copy.

§ 207. **Defendant, etc., discharged.**—After hearing the proofs, and the statement of the defendant, if he have made one, if it appear, either that a crime has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

Secor v. Babcock, 2 John. 208; Sandrock v. Knop, 34 How. 191.

§ 208. **When and how committed.**—If, however, it appear from the examination that a crime has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner, indorse on the depositions and statement an order, signed by him, to the following effect: "It appearing to me by the within depositions (and statement, if any) that the crime therein mentioned [or any other crime according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

May amend commitment. *Ex parte* Hogan, 55 How. Pr. 458. People v. Johnson, 46 Hun, 671; People v. Rhoner, 4 Park. 166; Matter of Smith, 5 Cow. 273; Pratt v. Hill, 16 Barb. 303; Lindsey v. People, 67 id. 548; Millet v. Baker, 42 id. 215; Bennac v. People, 4 id. 31; People v. Rawson, 61 id. 619; Gall v. Hall, 42 N. Y. 67; Matter of Barre, 14 Abb. (N. S.) 426; Shank's case, 15 id. 39; People v. Conner, 5 id. 430; Matter of Crandall, 2 Cal. 144; People v. McCurdy, 68 id. 576; Matter of Paul, 94 N. Y. 508; 2 N. Y. Cr. 6; Matter of Ramscar, 1 id. 35.

§ 209. **Order for commitment.** — If the crime be not bailable, the following words, or words to the same effect, must be added to the indorsement: "and that he be committed to the sheriff of the county of ," [or in the city and county of New York, "to the keeper of the city prison of the city of New York."]

§ 210. **Certificate of bail, etc.** — If the crime be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, must be added to the indorsement mentioned in section 208: "and I have admitted him to bail to answer, by the undertaking hereunto annexed.

People v. Hurlbutt, 44 Barb. 126; People v. Frink, 41 Hun, 195; 4 N. Y. Cr. 299.

§ 211. **Defendant to choose how he shall be tried.** —If the crime with which the defendant is charged be one triable, as hereinbefore provided, by a court of special sessions of the county in which the same was committed, the magistrate, before holding the defendant to answer, must inform him of his right to be tried by a jury after indictment, and must ask him how he will be tried. If the defendant shall require to be tried by a jury after indictment, he can only be held to answer to a court having authority to inquire by the intervention of a grand jury into offenses triable in the county. If he shall not so require, he may be held to answer at the court of special sessions.

See §§ 56, 57, 69, 70, *ante*. Election, when and how made. People v. Lied, 19 Alb. L. J. 400. Waiver of jury trial must appear on face of record. People v. Mallon, 39 How. Pr. 454. Waiver cannot be recalled. People v. Riley, 5 Park. 401. People v. McGann, 43 Hun, 55; People v. Burleigh, 1 N. Y. Cr. 522; People v. Putnam, 3 Park. 386; Hill v. People, 20 N. Y. 363; 49 Hun, 367; People v. Stark, 17 N. Y. State Rep. 237; Austin v. Vrooman, 128 N.Y. 235.

§ 212. **Order for bail, on commitment.**—If the crime be bailable and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, must be added to the indorsement mentioned in section 208, "and that he be admitted to bail in the sum of dollars, and be committed to the sheriff of the county of ," [or in the city and county of New York, "to the keeper of the city prison of the city of New York,"] until he give such bail.

§ 213 **Form of commitment** —If the magistrate order the defendant to be committed as provided in sections 209 and 212, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

§ 214. **Id.**—The commitment must be to the following effect:

"County of *Albany* [or as the case may be.]

"In the name of the people of the State of New York:

"To the sheriff of the county of Albany," [or in the city and county

of New York, "to the keeper of the city prison of the city of New York:"]

"An order having been this day made by me, that A. B. be held to answer to the court of upon a charge of [stating briefly the nature of the crime,] you are commanded to receive him into your custody and detain him, until he be legally discharged.

Dated at *the city of Albany*, [or as the case may be,] this day of , 18 .

C. D., *Justice of the Peace*,
[or as the case may be.]

It may be amended. *Ex parte* Hogan, 55 How. Pr. 458. People v. Johnson, 110 N. Y. 142; Matter of Paul, 94 N. Y. 504; 2 N. Y Cr. 6.

§ 215. **Undertaking of witnesses to appear, etc.**—On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people, a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statement are to be sent, or that he will forfeit the sum of one hundred dollars.

§ 216. **Security for appearance of witnesses, etc.**—When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness *is an accomplice in the commission of the crime charged*, he may order the witness to enter into a written undertaking, with such sureties, and in such sum as he may deem proper, for his appearance as specified in the last section. [AM'D CH 416 OF 1883.]

§ 217 **Witness under sixteen.**—*Children under the age of sixteen years, when witnesses, may be committed as provided by section two hundred and ninety-one of the Penal Code*, subject to the order of the trial court. [ADDED CH. 220 OF 1888. ORIGINAL SECTION REPEALED CH. 416 OF 183. AM'D CH. 279 OF 1892.]

§ 218. **Witness to be committed on refusal, etc.**—If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply or be legally discharged.

§ 219. **Witness unable to give security, may be conditionally examined.**—A witness may be conditionally examined on behalf of the people in the manner and with the effect provided by title twelve chapter three of this Code, for taking examination of witnesses conditionally on behalf of the defendant. A copy of the order and affidavit upon which the application is made, together with notice of the

time and place where the examination is to be taken, shall be served on the defendant, and his counsel, if he have any, at least two days before the time fixed for such examination, and the defendant may be present personally upon such examination to confront the witness produced against him, if the defendant have no counsel the order shall contain a provision assigning counsel to him for the purpose of such examination upon whom a copy of said order, affidavit and notice shall be served. [AM'D CH. 416 OF 1883; 422 OF 1887. PASSED MAY 21, 1887.]

See §§ 630-635, *post*.

§ 220. [Repealed ch. 416 of 1883.]

§ 221. **Magistrate to return depositions, etc.**—When a magistrate has discharged a defendant, or has held him to answer, as provided in sections 207 and 208, he must return to the next court of oyer and terminer or court of sessions of the county, or city court having power to inquire into the offense by the intervention of a grand jury, at or before its opening on the first day, the warrant, if any, the depositions, the statement of the defendant, if he have made one, and all undertakings of bail, or for the appearance of witnesses, taken by him.

TITLE IV.

Of Proceedings after commitment, and before Indictment.

CHAPTER I. Preliminary provisions.
II. Formation of the grand jury; its powers and duties.

CHAPTER I.

PRELIMINARY PROVISIONS.

SEC. 222. Crimes; how prosecuted.

§ 222. **Crimes; how prosecuted.**—All crimes prosecuted in a court of oyer and terminer, or in a court of sessions, or in a city court, must be prosecuted by indictment.

Section 6, art. 1 of State Const.; art. 5, Fed. Const.; Matter of McCluskey, 40 Fed. Rep. 71.

CHAPTER II.

FORMATION OF THE GRAND JURY, ITS POWERS AND DUTIES.

SEC. 223, 224. Grand jury defined.
225, 226, 227. For what courts to be drawn; the order.
228. Misdescription in order
229. Mode of selecting grand jurors.
230. If sixteen grand jurors do not appear, additional number to be ordered.
231, 232, 233. Manner of designating the additional grand jurors.
234. Summoning the additional grand jurors, and compelling their attendance.
235. When new grand jury may be summoned for the same court.
236. Grand jury, how drawn when more than a sufficient number attends.
237. Who may challenge an individual grand juror.
238. Causes of discharge of the panel.
239. Causes of challenge to an individual grand juror.
240. Manner of taking and trying the challenges.
241. Decision upon the challenge.
242. Effect of allowing a challenge to an individual grand juror.
243. Violation of last section.
244. Appointment of foreman.
245, 246, 247. Oath of the foreman and the other grand jurors.
248. Charge of the court.
249. Retirement of the grand jury.
250. Appointment of a clerk, and his duties.
251. Discharge of the grand jury.
252. Power of grand jury to inquire into crimes, etc.
253. Foreman may administer oaths.
254. Definition of an indictment.
255. Evidence receivable before a grand jury.
256. Same.
257. Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence to be produced.
258. Degree of evidence, to warrant an indictment.
259. Grand jurors must declare their knowledge as to commission of a crime.
260. Grand jury must inquire as to persons imprisoned on criminal charges and not indicted; the condition of public prisons; and the misconduct of public officers.
261. Grand jury entitled to access to public prisons, and to examine public records.
262, 263, 264. When and from whom they may ask advice, and who may be present during their sessions.
265. Secrets of the grand jury to be kept.
266. Grand jury, when bound to disclose the testimony of a witness.
267. Grand juror not to be questioned for his conduct as such.

§ 223. Grand jury defined.— A grand jury is a body of men, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, and chosen by lot, and sworn to inquire of crimes committed or triable in the county.

People ex rel. Pickard v. Sheriff, 11 Civ. Pro. 184; Matter of Choate, 24 Abb. N. C. 430; 18 Civ. Pro. 180; 8 N. Y. Cr. 1; Matter of Hackley, 24 N. Y. 78; People v. Naughton, 7 Abb. (N. S.) 421; Bergh's Case, 16 id. 284; People v. Kelly, 24 N. Y. 74; People ex rel. Hackley v. Kelly, 21 How. 54; Matter of Bain, 121 U. S. 1; People v. Briggs, 60 How. 21; People v. Hooghkerk, 96 N. Y. 149; People v. Fitzpatrick, 30 Hun, 493.

§ 224. Id.— The grand jury must consist of not less than sixteen and not more than twenty-three persons, and the presence of at least sixteen is necessary for the transaction of any business.

People v. King, 2 Cal. 98; Conkey v. People, 1 Abb. Dec. 418; 5 Park. 31.

§ 225. **For what courts to be drawn, etc.**—A grand jury must be drawn for every term of the following courts:

1. The court of oyer and terminer, except in the city and county of New York, and the county of Kings, and except for extraordinary or adjourned terms.

2. The court of general sessions of the city and county Of New York and the court of sessions of the county of Kings; and

3. The city courts whenever an indictment can be there found.

People v. Rugg, 98 N. Y. 537; 3 N. Y. Cr. 172.

§ 226. **Id.**— A grand jury may also be drawn:

1. For every other court of sessions, when specially ordered by the court, or by the board of supervisors.

2. For the court of oyer and terminer in the city and county of New York, upon the order of a judge of the supreme court elected in the first judicial district.

3 For the court of oyer and terminer, of the county of Kings, upon the order of a judge of the supreme court elected in the second judicial district.

People v. Rugg, 98 N. Y. 537; 3 N. Y. Cr. 172; 21 W. Dig. 85.

§ 227. **Id.**—If made by the court or a judge thereof, the order for a grand jury must be entered upon its minutes, and a copy thereof filed with the county clerk, at least twenty days before the term for which the jury is ordered. If made by the board of supervisors a copy thereof, certified by the clerk of the board, must be filed with the county clerk, at least twenty days before the term; and when so filed, is conclusive evidence of the authority for drawing the jury.

People v. Rugg, 98 N. Y. 537; 3 N. Y. Cr. 172; 21 W. Dig. 85.

§ 228. **Misdescription, etc.**—A misdescription of the title of the court in an order for a grand jury does not affect the validity of the order, if it can be plainly understood therefrom what court is intended.

§ 229. **Mode of selecting grand jurors.**—The mode of selecting grand jurors is prescribed by special statutes.

See Code Civ. Proc. §§ 1041, 2293-2301, 3314, 3351; 3 Rev. St. (6th ed.), pp. 1015-1019. See cases under § 223, *ante*.

§ 230. **If sixteen jurors do not appear, etc.**—If at any court of oyer and terminer or court of sessions, except in the counties of Genesee, Orleans and St. Lawrence, there shall not appear at least sixteen persons, duly qualified to serve as grand jurors, who have

been summoned, or if the number of grand jurors attending shall be reduced below sixteen, such court must, by order to be entered in its minutes, require the clerk of the county to draw, and the sheriff to summon, such additional number of grand jurors as shall be necessary, and must specify the number required in the order.

§ 231. **Manner of designating, etc.**—The clerk of the county must forthwith bring into court the box containing the names of the grand jurors, from which grand jurors in the county are required to be drawn; and he must, in the presence of the court, proceed publicly to draw the number of grand jurors specified in the order; and when such drawing is completed, he must make two lists of the persons so drawn, each of which must be certified by him to be a correct list of the names of the persons so drawn by him, one of which he must file in his office, and the other he must deliver to the sheriff.

§ 232. **Id.**—The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are drawn or designated in the list, provided in section 231, to appear in the court requiring their attendance at the time designated, and they must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

§ 233. **Same.**—In the counties of Genesee, Orleans and St. Lawrence, the names of the persons required to complete the grand jury may, in the discretion of the court, be drawn as provided in the last section, or may be publicly designated by the court, from the by-standers or the body of the county.

§ 234. **Summoning the additional grand jurors, etc.**—The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are drawn or designated, as provided in the last two sections, who must attend and serve as if they had been originally summoned as grand jurors, and are subject to the same penalties, unless excused or discharged by the court.

§ 235. **When new grand jury may be summoned for the same court.**—If a crime be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered, that the sheriff summon another grand jury; and the same shall be summoned, in the manner prescribed for grand juries in general.

Allen v. People, 57 Barb. 338.

§ 236. Grand jury, how drawn, when more than a sufficient number attends.—When more than twenty-three persons summoned as grand jurors attend for service, the clerk must prepare separate ballots containing their names, folded as nearly alike as possible, and so that the names can not be seen, and must deposit them in a box. He must then openly draw out of the box twenty-three ballots; and the persons whose names are drawn constitute the grand jury. The names remaining in the box, as well as those drawn, must be returned to the box of drawn grand jurors.

Error to swear twenty-four grand jurors. People *v.* King, 2 Cal. 98. When objection to be taken. Conkey *v.* People, 1 Abb. Dec. 418.

§ 237. Who may challenge an individual grand juror.—The district attorney in behalf of the people, and also a person held to answer a charge for crime, may challenge an individual grand juror.

§ 238. Causes of discharge of the panel.—There is no challenge allowed to the panel or to the array of the gand jury, but the court may, in its discretion, at any time discharge the panel and order another to be summoned, for one or more of the following causes:

1. That the requisite number of ballots was not drawn from the grand jury box of the county;
2. That notice of the drawing of the grand jury was not given;
3. That the drawing was not had, in the presence of the officers designated by law; and
4. That the drawing was not had, at least fourteen days before the court.

People *v.* Hooghkerk, 2 N. Y. Cr. 204; 96 N. Y. 158; People *v.* Fitzpatrick, 30 Hun, 493; 66 How. 14; 1 N. Y. Cr. 433; People *v.* Petrea, 30 Hun, 102; 92 N. Y. 128; Dolan *v.* People, 64 id. 485; Carpenter *v.* People, id. 483; People *v.* Duff, 63 How. 374; People *v.* Harriott, 3 Park 112; People *v.* Jewett, 3 Wend. 214; United States *v.* Tallman, 10 Blatchf. 31.

§ 239. Causes for challenge to grand jurors.—A challenge to an individual grand juror may be interposed, for one or more of the following causes, and for these only:

1. That he is a minor.
2. That he is an alien.
3. That he is insane.
4. That he is the prosecutor upon a charge against the defendant.
5. That he is a witness for either party, if the court is satisfied in the exercise of a sound discretion that he can not act impartially and without prejudice to the substantial rights of the party challenging.
6. That a state of mind exists on his part, in reference to the case or to either party, which satisfies the court, in the exercise of a sound

discretion that he can not act impartially and without prejudice to the substantial rights of the party challenging.

Dawson *v.* People, 25 N. Y. 405; People *v.* Jewett, 3 Wend. 314; 6 id. 386; People *v.* Hooghkerk, *supra.* See cases cited under last section. State *v.* Hamlin, 47 Conn. 95; 36 Am. Rep. 54; State *v* Easter, 30 Ohio St. 542; 27 Am. Rep. 478; State *v.* Flemming, 66 Me. 142; 23 Am. Rep. 552; Musick *v.* People, 40 Ill. 268; Reich *v.* State, 55 Ga. 73; 21 Am. Rep. 265; Hardin *v.* State 22 Ind. 347.

§ 240. Manner of taking and trying challenges.—Challenges to individual grand jurors may be oral, and must be entered upon the minutes and tried by the court in the same manner as challenges in the case of a trial jury.

See § 1180 of Code of Civ. Pro.; Weston *v.* People, 6 Hun, 140; People *v.* Tweed, 11 Id. 195.

§ 241. Decision upon the challenge.—The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

§ 242. Effect of challenge to grand juror, etc.—If a challenge to an individual grand juror be allowed for any of the causes mentioned in subdivisions one, two or three of section 239, he must be forthwith discharged from the grand jury. If such challenge be allowed for any of the causes mentioned in subdivisions four, five or six of section 239, the juror challenged can not be present at or take part in the consideration of the charge against the defendant mentioned in or who interposed the challenge, or in the deliberations or vote of the grand jury thereon.

§ 243. Violation of last section.—The grand jury must inform the court of a violation of the last section, and the same is punishable by the court as a contempt.

People ex rel. Munsell *v.* Oyer, etc. 101 N. Y. 251; 4 N. Y. Cr. 75; 3 How. U. S. 418; aff'g, 36 Hun, 280; 3 N. Y. Cr. 216.

§ 244. Appointment of foreman.—From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman when a person already appointed is discharged or excused before the grand jury are dismissed.

§ 245. Oath of the foreman, etc.—The following oath must be administered to the foreman of the grand jury: "You, as foreman of this grand jury, shall diligently inquire and true presenment make, of all such matters and things as shall be given you in charge; the

counsel of the people of this state, your fellows' and your own you shall keep secret; you shall present no person from envy, hatred or malice; nor shall you leave any one unpresented through fear, favor, affection or award, or hope thereof; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God!"

§ 246. **Id.**—The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God!"

§ 247. **Id.**—If, after the foreman and the grand jurors then present are sworn, any other grand juror appear, and be admitted as such, the oath, as prescribed in section 245, must be administered to him, commencing, "You, as one of this grand jury," and so on, to the end.

§ 248. **Charge to the grand jury.**—The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must read to them the provisions of this Code, from section 252 to section 267, both inclusive, or give them a copy thereof, and must give them such information as it may deem proper as to the nature of their duties, and any charges and crimes returned to the court, or likely to come before the grand jury. The court need not, however, charge them, respecting violations of a particular statute, excepting when so requested by the district attorney.

§ 249. **Retirement of the grand jury.**—The grand jury must then retire to a private room and inquire into the offenses cognizable by them.

People *v.* Sellick, 4 N. Y. Cr. 329; People ex rel. Pickard *v.* Sheriff, etc. 11 Civ. Pro. 172.

§ 250. **Appointment of a clerk, and his duties.**—The grand jury must appoint one of their number as clerk, who is to preserve minutes of their proceedings (except of the votes of the individual members on a presentment or indictment), and of the evidence given before them.

People *v.* Baker 10 How. 567.

§ 251. **Discharge of the grand jury.**—The grand jury, on the completion of the business before them, must be discharged by the

court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

People ex rel. Pickard v. Sheriff, etc. 11 Civ. Pro. 184; People v. Fitzpatrick, 30 Hun, 493; 66 How. 14.

§ 252. **Power of grand jury, etc.**—The grand jury has power, and it is their duty, to inquire into all crimes committed or triable in the county, and to present them to the court.

People v. Equitable Gas Light Co. 6 N. Y. Cr. 191; People v. Heffernan, 5 Park. 393; People v. Horton, 4 id. 222; People v. Page, 3 id. 600; French v. People, id. 114; People v. Hyler, 2 id. 566.

§ 253. **Foreman may administer oaths.**—The foreman may administer an oath, to any witness appearing before the grand jury.

§ 254. **Definition of an indictment.**—An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a crime.

See §§ 275, 956, *post*. People v. Dumar, 106 N. Y. 509; People v. Dunn, 53 Hun, 384; People v. White, 24 Wend. 570; People v. Gates, 13 id. 317; People v. Stark, 59 Hun, 58; People v. Jeffrey, 38 N. Y. St. Rep. 315.

§ 255. **Evidence, etc., before the grand jury.**—In the investigation of a charge, for the purpose of indictment, the grand jury can receive no other evidence than,

1. Such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence; or

2. The deposition of a witness, in the cases mentioned in the third subdivision of section 8.

People v. Dunn, 53 Hun, 384; People v. Briggs, 60 How. 17; People v. Hyler, 2 Park. 566; People v. Tinder, 19 Cal. 539; United States v. Kilpatrick, 16 Fed. Rep. 765; Same v. Reed, 2 Blatchf. 435.

§ 256. **Id.**—The grand jury can receive none but legal evidence.

Reception of improper evidence can not be raised by plea. 11 W. Dig. 386. People v. Dunn, 53 Hun, 384; People v. Briggs, 60 How. 17; People v. Sellick, 4 N. Y. Cr. 334; People v. Singer, 18 Abb. N. C. 101, n; People v. Hyler, 4 N. Y. Cr. 334; United States v. Kilpatrick, 16 Fed. Rep. 765; Hope v. People, 83 N. Y. 418.

§ 257. **Grand jury not bound to hear, etc.**—The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence, within their reach, will explain away the charge, they should order such evidence to be produced; and for that purpose, may require the district attorney to issue process for the witnesses.

Hope v. People, 83 N. Y. 418; People v. Dunn, 53 Hun, 384; People v. Singer, 18 Abb. N. C. 96; 5 N. Y. Cr. 2.

§ 258. Degree of evidence, to warrant an indictment.— The grand jury ought to find an indictment, when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

What evidence sufficient. People *v.* Hyler, 2 Park. 570. People *v.* Dunn, 53 Hun, 384; People *v.* Price, 53 Hun, 185; 6 N. Y. Cr. 144; People *v.* Baker, 10 How. 567.

§ 259. Grand jurors must declare their knowledge as to commission of a crime.— If a member of the grand jury know, or have reason to believe, that a crime has been committed, which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

People *v.* Dunn, 53 Hun, 384.

§ 260. Grand jury must inquire, etc.— The grand jury must inquire,

1. Into the case of every person imprisoned in the jail of the county, on a criminal charge, and not indicted;
2. Into the condition and management of the public prisons in the county; and
3. Into the willful and corrupt misconduct in office, of public officers of every description, in the county.

People *v.* Dunn, 53 Hun, 384.

§ 261. Grand jury entitled to access to public prisons, etc.— They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records in the county.

People *v.* Dunn, 53 Hun, 384.

§ 262. When and from whom they may ask advice, etc.—The grand jury may in any case ask the advice of any judge of the court, or of the district attorney of the county.

People *v.* Dunn, 53 Hun, 384; People *v.* Sellick, 4 N. Y. Cr. 329.

§ 263. Id.— Whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter, and of issuing subpœnas or other process for witnesses.

People *v.* Dunn, 53 Hun, 384.

§ 264. Id.— The district attorney of the county must be allowed at all times to appear before the grand jury, at his request, for the

purpose of giving information relative to any matter before them, but no district attorney, officer, or other person, shall be present with the grand jury during the expression of their opinions, or the giving of their votes upon any matter.

People v. Dunn, 53 Hun, 384.

§ 265. **Secrets of the grand jury to be kept.**— Every member of the grand jury must keep secret whatever he himself, or any other grand juror may have said, or in what manner he, or any other grand juror, may have voted, on a matter before them.

People ex rel. Pickard v. Sheriff, etc. 11 Civ. Pro. 179; People v. Dunn, 53 Hun, 384.

§ 266. **Grand jury, when bound to disclose the testimony of a witness.**— A member of the grand jury may, however, be required by any court, to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

People v. Hulbut, 4 Denio, 133; People ex rel. Pickard v. Sheriff, etc. 11 Civ. Pro. 179; People v. Dunn, 53 Hun, 384.

§ 267. **Grand juror not to be questioned for his conduct, etc.**—A grand juror can not be questioned for anything he may say, or any vote he may give, in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

Reflections on jurors will be punished as contempt. Ex. p. Van Hook, 3 C. H. Rec. 64; Ex. p. Spooner, 5 id. 109. See People ex rel. Munsell v. Ct. of O. and T. 101 N. Y. 245; aff'g 36 Hun, 277; People v. Dunn, 53 Hun, 384.

TITLE V.

Of the Indictment.

CHAPTER I. Finding and presentation of the indictment.
II. Form of the indictment.
III. Amendment of the indictment.
IV. Arraignment of the defendant.
V. Setting aside the indictment.
VI. Demurrer.
VII. Plea.
VIII. Removal of the action before trial.

CHAPTER I.

FINDING AND PRESENTATION OF THE INDICTMENT.

SEC. 268. Indictment must be found by twelve grand jurors, and indorsed by foreman.
269. If not so found, depositions, etc., must be returned to the court, with dismissal indorsed.
270. Effect of dismissal.
271. Names of witnesses must be indorsed upon indictment.
272. Indictment must be presented in presence of the grand jury, and filed.

§ 268. Indictment must be found by twelve jurors, and indorsed by foreman.— An indictment can not be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

Indorsement no part of indictment. Brotherton *v.* People, 75 N. Y. 159. Dawson *v.* People, 25 N. Y. 403; People *v.* Shattuck, 6 Abb. N. C. 33; Hamilton *v.* State, 103 Ind. 96; 53 Am. Rep. 491, n.; Wall *v.* State, 23 Ind. 150; State *v.* Brown, 31 Vt. 602; State *v.* Taggert, 38 Me. 298; McGuffie *v.* State, 17 Ga. 497; State *v.* Hogan, 31 Mo. 342; People *v.* Peck, 2 N. Y. Cr. 314; 18 W. Dig. 527; aff'd 96 N. Y. 650; State *v.* Barker, 12 S. E. Rep. 115.

§ 269. If not so found, depositions, etc., must be returned to the court, with dismissal indorsed.— If twelve grand jurors do not concur in finding an indictment, the depositions (and statement, if any), transmitted to them, must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Grand jury may be examined in support of a motion to quash indictment to prove twelve did not concur. People *v.* Shattuck, 6 Abb. N. C. 33; see People *v.* Briggs, 60 How. Pr. 17. Esterlong *v.* State, 35 Miss. 210; State *v.* Horton, 63 N. C. 595.

§ 270. Effect of dismissal.— The dismissal of the charge does not, however, prevent its being again submitted to a grand jury, as often as the court may so direct. But without such direction, it can not be again submitted.

People *v.* Warren, 109 N. Y. 617; People *v.* Lynch, 20 W. Dig. 9; People ex rel. Pickard *v.* Sheriff, etc. 11 Civ. Pro. 186.

§ 271. Names of witnesses must be indorsed upon indictment.— When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, as provided in section 255, must be indorsed upon the indictment before it is presented to the court. If not so indorsed, the court must, upon the application of the defendant, at any time before trial, direct the names of such witnesses as they appear upon the minutes of the grand jury to be furnished to him forthwith.

Discretionary with court to order prosecution to furnish prisoner the evidence used before the grand jury. Eighmy v. People, 79 N. Y. 546. People v. Jaehne, 4 N. Y. 161; People v Naughton, 38 How. 430; 7 Abb. (N. S.) 421; State v. Shores, 31 W. Va. 491; 13 Am. St. 875.

§ 272. Indictment must be presented in presence of the grand jury and filed.— An indictment, when found by the grand jury, as prescribed in section 268, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record, but it must not be shown to any person other than a public officer, until the defendant has been arrested or has appeared.

Provision for filing merely directory. Dawson v. People, 25 N. Y. 399; see § 313, *post*.

CHAPTER II.

FORM OF THE INDICTMENT.

SEC. 273. Forms of pleading heretofore existing, abolished.
274. First pleading for the people is indictment.
275. Indictment, what to contain.
276. Form of indictment.
277. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.
278, 279. Indictment must charge but one crime and in one form, except where it may be committed by different means.
280. Statement as to time when crime was committed
281. Statement as to person injured or intended to be injured.
282. Construction of words used in indictment.
283. Words used in a statute need not be strictly pursued.
284. Indictment when sufficient.
285. Indictment not insufficient for defect of form, not tending to prejudice defendant.
286. Presumptions of law and matters of which judicial notice is taken, need not be stated.
287. Pleading a judgment or determination of, or proceeding before a court or officer of special jurisdiction.
288. Private statute, how pleaded.
289. Pleading in indictment for libel.
290. Pleading in indictment for forgery, where the instrument has been destroyed, or withheld by defendant.
291. Pleading in indictment for perjury or subornation of perjury.
292. Upon indictment against several, one or more may be convicted or acquitted.

§ 273. Forms of pleading heretofore existing abolished.—All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

People v. Richards, 44 Hun, 286; 5 N. Y. Cr. 367; People v. Petrea, 30 Hun, 98; 1 N. Y Cr. 198; 64 How. 139; aff'd, 92 N Y. 128; 1 N. Y. Cr. 233; 65 How. 59; People v. Conroy, 97 N. Y. 62; 2 N. Y. Cr. 573; People v. Rugg, 98 N. Y. 537; 3 N. Y. Cr. 179; People v Menken, 36 Hun, 94; 3 N. Y. Cr. 237; People v Dumar, 106 N. Y. 509; People v. Willson, 109 N. Y. 351; People v. Gregg, 59 Hun, 109.

§ 274. First pleading, etc., is indictment.—The first pleading on the part of the people is the indictment.

Form of objections, how taken. People v. Conroy, 2 N. Y. Cr. 565; People v. Grimshaw, ib. 390. People v. Dumar, 106 N. Y. 509.

§ 275. **Indictment, what to contain.**—The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A plain and concise statement of the act constituting the crime, without unnecessary repetition.

People v. Johnson, 104 N. Y. 216; People v. Conroy, 97 id. 62; 2 N. Y. Cr. 565; People v. Wise, 3 id. 303; 2 How. (N. S.) 98; People v. Carr, 3 N. Y. Cr. 578; People v. Dumar, 106 N. Y. 502; 42 Hun, 80; People v. Menken, 36 Hun, 92; 3 N. Y. Cr. 233; 21 W. Dig. 552; People v. Moore, 37 Hun, 87; People v. Bellows; 2 N. Y. Cr. 14; 1 How. (N. S.) 151; People v. Peck, 2 N. Y. Cr. 315; People v. Grimshaw, 33 Hun, 507; 2 N. Y. Cr. 392; 20 W. Dig. 116; People v. Rugg, 98 N. Y. 537; 3 N. Y. Cr. 179; People v. Reavy, 38 Hun, 421; People v. Dimick, 109 N. Y. 29; 41 Hun, 621; People v. Willson, 109 id. 351; People v. Bliven, 112 id. 87; People v. Dunn, 53 Hun, 384; People v. Everest, 51 id. 23; People v. Klock, 48 id. 276; People v. Barber, id. 199; People v. Stark, 59 id. 56; People v. Gregg, id. 109; People v. Farrell, 28 N. Y. St. Rep. 44; People v. Harris, 123 N. Y. 70; Same v. Same, 28 N. Y. St. Rep. 298; People v. Sullivan, 4 N. Y. Cr. 193; People v. Upton, 38 Hun, 107; 4 N. Y. Cr. 455.

§ 276. **Form of Indictment.**—The indictment should be signed by the district attorney, and may be substantially in the following form:

Court of oyer and terminer of the county of , [stating the proper county.]

or

Court of oyer and terminer of the city and county of New York.

or

Court of sessions of the county of , [stating the proper county.]

or

Court of general sessions of the city and county of New York.

or

City court of the city of , [stating the proper city.]

The People of the state of New York
against
A. B.

The grand jury of the , [here insert the name of the county, or of the city, or of the city and county, in which the indictment is found,] by this indictment, accuse A. B. of the crime of , [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name, such as libel, assault, or the like, insert a brief description of it, as it is given by statute;] committed as follows:

The said A. B., on the day of , 18 , at the

town, [or city or village, as the case may be] of in this county, [here set forth the act charged as an offense.]

A. B.,

District Attorney of the county of

Substantial compliance. People *v.* Peck, 18 W. Dig. 527; People *v.* Reavey, 38 Hun, 418; Same *v.* Same, 39 id. 384; People *v.* Cruger, id. 500; People *v.* Moore, 22 W. Dig 79. See cases under last section. People *v.* Everhardt, 104 N. Y. 596; 2 Sil. (Ct App.) 510, People *v.* Willet, 102 N. Y. 246; People *v.* Rich, 2 N. Y. Cr. 315; People *v.* Maxon, 57 Hun, 370; People *v.* Rice, 35 N. Y. St. Rep. 185; aff'd, 128 N. Y. 619.

§ 277. When defendant is indicted by fictitious, etc.—If a defendant is indicted by a fictitious or eroneous name, and in any stage of the proceedings, his true name is discovered it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Crowley *v.* People, 21 Hun, 415; s. c. 83 N. Y. 464; Barnesciotta *v.* People, 10 Hun, 137; s. c. 69 N. Y. 612; People *v.* Burns, 2 N. Y. Cr. 398; People *v.* Everhardt, 104 N. Y. 596; 2 Sil. (Ct. App.) 510; People *v.* Smith, 1 Park 327; Walter *v.* People, 32 N. Y. 163; Pace *v.* State, 69 Ala. 231, 44 Am. Rep. 513 Lasure *v.* State, 19 Ohio, 43; State *v.* Burns, 8 Nev. 251.

§ 278. Indictment must charge but one crime, etc.— The indictment must charge but one crime and in one form except as in the next section provided.

Read *v.* People, 86 N. Y. 381; People *v.* Callahan, 29 Hun, 580; 17 W'k Dig. 192; People *v.* Moore, 37 Hun, 87; People *v.* Infield, 1 N. Y. Cr. 146; People *v.* Cole, 2 id. 109; People *v.* Upton, 38 Hun, 110; 4 N. Y. Cr. 455; People *v.* Dimick, 107 N. Y. 31; People *v.* Willson, 109 id. 351; People *v.* Dumar, 106 id. 510; People *v.* O'Donnell, 46 Hun, 360; People *v.* Ward, 3 N. Y. Cr. 484; People *v.* Powell, 4 id. 586; People *v.* Lenhardt, id. 326; People *v.* Emerson, 53 Hun, 438; People *v.* Burns, id. 276; People *v.* Klock, 48 id. 276; People *v.* Charbineau, 115 N. Y. 436; People *v.* Everest, 51 Hun, 20; People *v.* Harris, 28 N. Y. St. Rep. 300; People *v.* Crotty, 30 id. 45; People *v.* Rice, 35 id. 168; affirmed, 128 N. Y. 649; People *v.* Rose, 39 N. Y. St. Rep. 292.

§ 279. Id. — The crime may be charged in separate counts to have been committed *in a different manner* or by different means; and where the acts complained of may constitute different crimes, such crimes may be charged in separate counts. [AM'D CH. 306 OF 1883.]

Counts may refer to, without repeating, facts in each other. People *v.* Graves, 5 Park. 134. Court has discretionary power to compel prosecution to elect one of several counts. Hawker *v.* People, 75 N. Y. 487; see 8 Wend. 211; 3 Park. 15; 47 N. Y. 548; 60 Bar. 26; 1 Hun, 501; Dolan *v.* People, 6 id. 493; s. c. 64 N. Y. 485; 73 id. 65; 5 Hun, 167; 6 id. 401, 13 id. 395; 12 id. 212; 27 id. 311; 29 id. 580; 1 N. Y. Cr. 146; 90 N. Y. 104; 91 id. 5; 70 id. 38; 72 id. 393; 2. N. Y. Cr. 108. If one count good, sufficient. People *v.* Menken, 36 Hun, 90. See People *v.* Conroy, 97 N. Y. 62. Different offenses. People *v.* Church, 1 How. Pr. (N. S.) 366; People *v.* Wise, 2 Ib. 92; People *v.* Upton, 38 Hun, 107; People *v.* Reavey, ib. 418. See cases cited under last section. People *v.* Rose, 52 Hun, 34; People *v.* Dunn, 90 N. Y. 104; People *v.* McCarthy, 110 id. 314; People *v.* Davis, 56 id. 95; Nelson *v.* People, 23 id. 293; 5 Park 39; Dawson *v.* People. 25 id. 399; Pollinsky *v.* People, 73 id. 65; Armstrong *v.* People, 70 id. 38; People *v.* Graves, 5 Park. 134; Lonergan *v.* People, 6 id 209; 50 Barb. 266; Coats *v.* People, 4 Park. 662; Labeau *v.* People, 6 id. 371; 33 How. 66; Reed *v.* People 1 Park 481; Taylor *v.* People 12 Hun, 212; People *v.* Gen. Sessions, id. 395; Phelps *v.* People 4 id. 401; People *v.* Satterlee, 5 id. 176; Harris *v.* People, 6 T. & C. 206; Hodgman *v.* People 4 Den. 235; People *v.* Costello, 1 id. 83.

§ 280. **Statement as to time, etc.**—The precise time at which the crime was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the crime.

People *v.* Jackson, 111 N. Y. 369; People *v.* Emerson, 53 Hun, 440; People *v.* Krank, 46 id. 634; People *v.* Stocking, 6 Park. 263; 50 Barb. 573; 32 How. 48; Gill *v.* People, 3 Hun, 187; aff'd, 60 N. Y. 643; People *v.* Buddensieck, 103 N. Y. 496; 4 N. Y. Cr. 230; People *v.* Lavin, id. 547.

§ 281. **Statement as to person injured, etc.**—When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

People *v.* Johnson, 104 N. Y. 216; 5 N. Y. Cr. 219; People *v.* Dunn, 53 Hun, 387; People *v.* Richards, 44 id. 286; 5 N. Y. Cr. 367; Kennedy *v.* People, 39 N. Y. 245; People *v* Clements, 5 N. Y. Cr. 287; People *v.* Lake, 110 N. Y. 61.

§ 282. **Construction, etc.**—The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

People *v.* Dunn, 53 Hun, 387; People *v.* Dumar, 106 N. Y. 510; People *v.* Wise, 3 N. Y. Cr. 305; 2 How. (N. S.) 98; People *v.* Klock, 48 Hun, 475; People *v.* Farrell, 28 N. Y. St. Rep. 44; People *v.* Crotty, 30 id. 45.

§ 283. **Words used in a statute need not be strictly pursued.**—Words used in a statute to define a crime need not be strictly pursued in the indictment; but other words, conveying the same meaning, may be used.

Tully *v.* People, 67 N. Y. 15; People *v.* Dunn, 53 Hun, 387; People *v.* Haight, 54 id. 9; People *v.* Osterhout, 34 id. 261; 3 N. Y. Cr. 445; Sauser *v.* People, 8 Hun, 302; People *v.* Gregg, 59 id. 112; People *v.* Buddensieck, 103 N. Y 496; People *v.* Willett, 102 id. 253; People *v.* Dimick, 107 id. 29; 41 Hun, 621; People *v.* Clements, id. 210; People *v.* Weldon, 111 id. 575, People *v.* Jachne, 103 id. 194; People *v.* West, 106 N. Y. 295; People *v.* Whedon, 2 N. Y. Cr. 320; Matter of Gray, id. 306; Fraser *v.* People, 54 Barb. 306; People *v.* Lowndes, 42 N. Y. St. Rep. 360, 362.

§ 284. **Indictment, when sufficient.**—The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not accurately stated;

2. That it was found by a grand jury of the county, or if in a city court, of the city in which the court was held;

3. That the defendant is named, or if his name can not be discovered, that he is described by a fictitious name, with the statement that it has been found impossible to discover his real name;

4. That the crime was committed at some place within the juris-

diction of the court; except where, as provided by sections 133 to 138, both inclusive, the act, though done without the local jurisdiction of the county, is triable therein;

5. That the crime was committed at some time prior to the finding of the indictment;

6. That the act or omission, charged as the crime, is plainly and concisely set forth;

7. That the act or omission, charged as the crime, is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

See cases cited under last section.

Sub. 7. Use of common abbreviation will not vitiate. Patterson *v.* People, 12 Hun, 137. What a sufficient statement of facts. Phelps *v.* People, 6 Hun, 401; 72 N. Y. 334. Abortion. Eckhardt *v.* People, 22 Hun, 525; s. c. 83 N. Y. 462. Larceny. McCarney *v.* People, 83 N. Y. 408, Burglary. Quinn *v.* People, 71 N. Y. 561. Embezzlement. Bork *v.* People. 16 Hun, 476; s. c. 83 N. Y. 609. Arson. People *v.* Pierce, 11 Hun, 633. Corporation: People *v.* Graham, 1 Sheld. 151. False pretenses, 66 Bar. 131; Barber *v.* People, 17 Hun, 366; Webster *v.* People, 92 N. Y. 422. Cheating. People *v.* Fisk, 1 Sheld. 537. Lotteries. Pickett *v.* People, 8 Hun, 83; s. c. 69 N. Y. 600; People *v.* Noelke, 29 Hun, 461. Liquor selling. Schwab *v.* People, 4 Hun, 520; Jefferson *v.* People, 28 Hun, 52. General averments. People *v.* Weston, 1 Sheld. 555. Bank officers. People *v.* Williams, ib. 568. Election officers. Hall *v.* People, 90 N. Y., 498; Boland *v.* People, ib. 678. See Pontius *v.* People, 82 N. Y. 339; S. & T. P. Co. *v.* People, 66 Bar. 25; People *v.* Hallenbeck, 52 How. Pr. 502; People *v.* O. & T. 83 N. Y. 436. Common law rules prevail where the Code is silent. People *v.* Wise, 2 How. Pr. (N. S.) 92; 3 N. Y. Cr. 305. People *v.* Reavey, 38 Hun, 421; 4 N. Y. Cr. 14; People *v.* Dewey, 35 Hun, 311; People *v.* Bowe, 34 id. 533; Parkhurst *v.* Higgins, 38 id 113; People *v.* Conroy, 97 N. Y. 62; People *v.* Jackson, 111 N. Y. 369; People *v.* Farrell, 28 N. Y. State Rep. 44; People *v.* Crotty, 30 id. 45; People *v.* Dumar, 106 N. Y. 509; People *v.* Bliven, 112 id. 79; People *v.* Sullivan, 4 N. Y. Cr. 193; People *v.* Smith, 6 id. 473; Bork *v.* People, 91 N. Y. 13; 1 N. Y. Cr. 379; People *v.* Kelly, 3 id. 272; People *v.* Gregg, 59 Hun, 112; People *v.* Buffum, 27 id. 216; People *v.* Horton, 42 N. Y. State Rep. 587, 588.

§ 285. Indictment not insufficient for defect of form, etc.—No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of an imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

See Schrumpf *v.* People, 14 Hun, 10; Pontius *v.* People, 82 N. Y., 339; Gray *v.* People, 21 Hun, 140, furnishing defendant grand jury minutes to aid indictment. Eighmy *v.* People, *post*; People *v.* Peck, 2 N. Y. Cr., 314. People *v.* Gregg, 59 Hun, 112; People *v* Weldon, 111 N. Y., 575; People *v.* Haight, 54 Hun, 9; People *v.* Willett, 102 N. Y., 253; People *v.* Buddensieck, 103 id., 496; People *v* Dimick, 107 id., 29; 41 Hun, 621; People *v.* Clements, id., 210; People *v.* Dunn, 53 Hun, 387; People *v* Ostherout, 34 id., 261; 3 N. Y. Cr., 445; People *v.* Haight, 54 Hun, 9; People *v.* McHale, 39 N. Y. St. Rep., 762; People *v.* Williams, 18 id., 405; People *v.* Sullivan, 4 N. Y. Cr., 194; People *v.* Dewey, 35 Hun, 311; People *v.* Bellows, 2 N. Y. Cr. 12; People *v.* Lowndes, 42 N. Y. St. Rep., 360, 362; People *v.* Tower, id., 164, 166.

§ 286. Presumptions of law, etc.—Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment.

People *v.* Dunn, 53 Hun, 387; Carncross *v.* People, 1 N. Y. Cr. 518; 17 W. Dig. 383.

§ 287. **Pleading a judgment, etc.**—In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, may be established on the trial.

See Eighmy *v.* People, 79 N. Y., 546; People *v.* Burns, 53 Hun, 567.

§ 288. **Private statute, how pleaded.**—In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute, by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

See § 530 of Code of Civil Pro.

§ 289. **Indictment, etc., for libel.**—An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded; but it is sufficient to state generally, that the same was published concerning him; and the fact that it was so published, must be established on the trial.

People *v.* Isaacs, 1 N. Y. Cr. 148; People *v.* Wise, 3 Id. 305; 2 How. N. S. 98; Richardson *v.* State, 9 E. R. 277; People *v.* Stark, 59 Hun, 59.

§ 290. **Pleading in indictment for forgery, etc.**—When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument is immaterial.

People *v.* Wise, 3 N. Y. Cr. 305; 2 How. (N. S.) 98; People *v.* Kingsley, 2 Cow. 522; People *v.* Badgley, 16 Wend. 53.

§ 291. **Pleading in indictment for perjury, etc.**—In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person where or before whom the perjury was committed.

Eighmy *v.* People, 79 N. Y. 546; Stratton *v.* People, 81 N. Y. 629; People *v.* Grimshaw, 2 N. Y. Cr. 390; People *v.* Wise, 3 N. Y. Cr. 305; 2 How. (N. S.) 98 People *v.* Clements, 42 Hun, 358; 107 N. Y. 205; Tuttle *v.* People 36 Id. 431

Harris v. People, 4 Hun, 1; Ortner v. People, id. 328; People v. Williams. 18 N. Y St. Rep. 403; Burns v. People, 55 Barb. 531; 5 Lans. 189; Geston v. People, 4 id 487; 61 Barb. 35; People v. Hoag, 2 Park. 9; People v. Sweetman, 3 id. 358; People v. McKinney, id. 510; O'Reilly v. People, 9 Abb. N. C. 77; People ex rel. Danziger v. Prot. E. House, etc. 128 N. Y. 185.

§ 292. **Upon indictment against several, etc.**—Upon an indictment against several defendants any one or more may be convicted or acquitted.

White v. People, 32 N. Y. 469; March v. People, 7 Barb. 391; Klein v. People, 31 N. Y. 229; Chatterton v. People, 15 Abb. 147; Mack v. State, 32 Miss. 406; Shorese v. Com. 5 Penn. St. 83; United States v. Harding, 1 Wall Jr 127; People v. Cotto, 42 N. Y. St. Rep. 713, 716.

CHAPTER III.

AMENDMENT OF THE INDICTMENT.

SEC. 293. When amendment allowed.
294. Trial to proceed.
295. Effect of verdict, etc.

§ 293. **When amendment allowed.**— Upon the trial of an indictment, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant can not be thereby prejudiced in his defense on the merits, direct the indictment to be amended, according to the proof, on such terms as to the postponement of the trial, to be had before the same or another jury, as the court may deem reasonable.

When denied. People v. Poucher, 30 Hun, 576. Constitutional. People v. Johnson, 104 N. Y. 216; 5 N. Y. Cr. 217; 4 id 591; People v. Herman, 45 Hun, 176. 27 W. Dig. 118; People v. Richards, 44 Hun, 278, 5 N. Y. Cr. 367. When allowed; People v. Dunn, 53 Hun, 382; People v. Hagan, 37 N. Y. St. Rep. 641; People v. Johnson, 104 N. Y. 213, 5 N. Y. Cr. 217; 4 id. 591; People v. Herman, 45 Hun, 175; 27 W. Dig. 118; People v Jackson, 111 N. Y. 369; People v. Clegg. 32 N. Y. St. Rep. 701; Knight v State, 64 Miss. 802; State v. Buchanan, 35 La. Ann. 89; State v. Dominique, 39 id. 323. See People v. Petrea, 92 N. Y. 145; People v. Campbell, 4 Park. 387; Matter of Bain, 121 U. S. 1; Com. v. Drew, 3 Cush. 279; Com. v. Mahar, 16 Pick. 120; Com. v. Child, 13 id. 200; State v. Moore, 24 S. C. 150; 58 Am. Rep. 241.

§ 294. **Trial to proceed.**— After such amendment, the trial, whenever the same shall be proceeded with, shall proceed in the same manner and with the same consequences, as if no such variance had occurred.

People v. Jackson, 111 N. Y. 369; People v. Johnson, 104 id. 216; 5 N. Y. Cr. 217; 4 id. 591; People v. Richards, 44 Hun, 288; 5 N. Y. Cr. 367; People v. Herman, 45 Hun, 176; 27 W. Dig. 118.

§ 295. **Effect of verdict, etc.**— A verdict and judgment, which shall be given after the making of any such amendment, shall be of

the same force and effect as if the indictment had originally been found in its amended form.

People v. Jackson, 111 N. Y. 369; People v. Johnson, 104 id. 216; 5 N. Y. Cr. 217; 4 id. 591.

CHAPTER IV.

ARRAIGNMENT OF THE DEFENDANT.

SEC. 296. Defendant must be arraigned in the court in which indictment is found, if triable therein, or if not, in that to which it is sent or removed.
297. If indictment be for felony, defendant must be present; if for misdemeanor, he may appear by counsel.
298. When personal appearance is necessary, if defendant be in custody, he must be brought before the court.
299. If discharged on bail or deposit, bench warrant to issue.
300. Bench warrant, by whom, and how issued.
301. Form of bench warrant.
302. Direction in bench warrant, if indictment be for misdemeanor.
303. If offense be bailable, order for bail to be indorsed on bench warrant.
304. Bench warrant, how served.
305. Proceedings on bench warrant, when defendant is brought before magistrate of another county.
306. Ordering defendant into custody, or increasing bail, when indictment is for felony.
307. Defendant, if present, to be committed; if not, bench warrant to issue.
308. Defendant appearing for arraignment without counsel, to be informed of his right to counsel.
309. Arraignment, how made.
310. If he gave another name, subsequent proceedings to be had by that name, referring to name in the indictment.
311. Time allowed defendant to answer indictment.
312. How defendant may answer indictment.

§ 296. Defendant must be arraigned, etc.— When an indictment is filed, the defendant must be arraigned thereon, before the court in which it is found, or before the court to which it is sent or removed.

When court of sessions can not arraign. People v. McCraney, 21 How. Pr. 149. See People v. Pierson, 79 N. Y. 424. Failure to arraign. People v. Ostrhout, 34 Hun, 260. Necessary. People v. Bradner, 107 N. Y. 1; Sanders v. State, 97 Ind. 147. Sufficient. People v. Frost, 5 Park. 52. Corporation. People v. Gas-light Co. 6 N. Y. Cr. 189. See King v. People, 5 Hun, 297.

§ 297. If indictment be for felony, etc.— If an indictment be for a felony, the defendant must be personally present when arraigned; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

Presence in adjoining room. People v. Bragle, 88 N. Y. 565; Same v. Same, 26 Hun. 378. When unnecessary. People v. Vail, 57 How. Pr. 581. See People v. Gas-light Co. 6 N. Y. Cr. 189.

§ 298. When personal appearance is necessary, etc.—When his personal appearance is necessary, if he be in custody, the court

may direct the officer in whose custody he is, to bring him before it to be arraigned.

People *v.* Gas-light Co. 6 N. Y. Cr. 190.

§ 299. **If discharged on bail, etc.**—If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, or if the defendant be for any cause absent, when his personal attendance is necessary, the court, in addition to the forfeiture of any undertaking of bail, or of any money deposited, may direct the clerk to issue a bench warrant for his arrest.

See §§ 599, *post*. Sherwin *v.* People, 100 N. Y. 351; People ex rel. Sherwin *v.* Mead, 28 Hun, 227; 64 How. 41; People *v.* Gas-Light Co. 6 N. Y. Cr. 190.

§ 300. **Bench warrant, by whom, etc., issued.**—The clerk, on the application of the district attorney, may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant to one or more counties. A bench warrant for the arrest of any defendant indicted, may also be issued by the district attorney at any time after the indictment is found.

See §§ 306, 599, *post*.

§ 301. **Form of bench warrant.**—The bench warrant issued upon the indictment must, if the crime be a felony, be substantially in the following form:

"County of *Albany*, [or as the case may be].

"In the name of the People of the state of New York:

"To any peace officer in this state. An indictment having been found on the day of , 18 , in the *court of sessions of the county of Albany* [or as the case may be] charging C. D. with the crime of [designating it generally].

"You are therefore commanded, forthwith to arrest the above named C. D., and bring him *before that court*, [or if the indictment have been sent or removed to another court,] before the *court of oyer and terminer of the county*, [or as the case may be,] to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of *Albany*, [or as the case may be, or in the city and county of New York "to the keeper of the city prison of the city of New York."]

"City [or town] of , the day of , 18

"By order of the court,

E. F. *Clerk*."

or G. H.,

District Attorney of the county of ."

What to state. People *v.* Sherwin, 17 W. D. 125; People ex rel. Sherwin *v.* Mead, 28 Hun, 227; 64 How. 41; 15 W. Dig. 552; aff'd, 92 N. Y. 415; 1 N. Y. Cr. 417.

§ 302. **Direction in bench warrant, etc.**— If the crime be a misdemeanor, the bench warrant must be in a similar form, adding to the body thereof, a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

People ex rel. Sherwin *v.* Mead, 28 Hun, 227; 64 How. 41; 15 W. Dig. 552; aff'd, 92 N. Y. 415; 1 N. Y. Cr. 417.

§ 303. **If offense be bailable, etc.**— If the crime charged be bailable, the court, upon directing the bench warrant to issue, may fix the amount of bail; and in such case an indorsement must be made upon the bench warrant and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in sum of ——— dollars."

§ 304. **Bench warrant how served.**—The bench warrant may be served in any county, in the same manner as a warrant of arrest, except, that when served in another county, it need not be indorsed by a magistrate of that county.

§ 305. **Proceedings on bench warrant, etc.**— If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon, as provided in sections 159 to 161, both inclusive.

§ 306. **Ordering defendant into custody, or increasing bail, etc.**— If the defendant, before the finding of an indictment, has given bail for his appearance to answer the charge, the court, to which the indictment is presented or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

See § 599, *post.*

§ 307. **Defendant, if present, to be committed; if not, bench warrant to issue.**— If the defendant be present when the order is made, he must be forthwith committed accordingly. If he be not present, a bench warrant must be issued and proceeded upon, in the manner provided in this chapter.

See § 600, *post.*

§ 308. **Defendant appearing, etc., without counsel, etc.**— If the defendant appear for arraignment, without counsel, he must be asked if he desire the aid of counsel, and if he does, the court must assign counsel.

See People ex rel. Ransom *v.* Board, etc. 73 N. Y. 622; People ex rel. Brown *v.* Supervisors, 4 N. Y. Cr. 102; 3 How. (N. S.) 6; People ex rel. Hadley *v.* Supervisors, etc. 28 How. 22; People *v.* Willett, 3 N. Y. Cr. 54; 1 How. N. S. 197.

§ 309. **Arraignment, how made.**—The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in stating the charge in the indictment to the defendant, and in asking him whether he pleads guilty or not guilty thereto. If the defendant demand it, the indictment must be read, or a copy thereof furnished to him before requiring him to plead.

People *v.* Bradner, 107 N. Y. 1; People *v.* Frost, 6 Park. 54; People *v.* Gaslight Co. 6 N. Y. Cr. 190.

§ 310. **If he gave another name, etc.**— If when arraigned the defendant allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

People *v.* Bradner, 107 N. Y. 1; People *v.* Everhardt, 104 N. Y. 591; 2 Sil. (Ct. App.), 506; 25 W. Dig. 300.

§ 311. **Time, etc., to answer indictment.**— If on the arraignment the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court deems reasonable, to answer the indictment.

Bill of particulars. People *v.* Bellows, 1 How. Pr. (N. S.), 149.

§ 312. **How defendant may answer indictment.**— In answer to the indictment, the defendant may either move the court to set the same aside, or may demur or plead thereto.

See § 315, *post*. Defendant can not plead that grand jury was irregularly organized. People *v.* Dolan, 6 Hun, 232; s. c. ib. 493; 64 N. Y. 485. See Hope *v.* People, 11 W. D. 386; People *v.* Briggs, 60 How. 17. See 14 N. Y. Supp. 643; People *v.* Petrea, 92 N. Y. 128, 145; People *v.* Price, 6 N. Y. Cr. 143; People *v.* Clements, 5 id. 292; People *v.* Gas light Co. 6 id. 189; State *v.* Gardner, 13 Lea, 134; 49 Am. Rep. 660; Schultz *v.* State, 15 Tex. App. 258; 49 Am. Rep. 194.

CHAPTER V.

SETTING ASIDE THE INDICTMENT.

SEC. 313. Indictment, when set aside on motion.
314. Defendant, when precluded from objecting to indictment in any other manner.
315. Motion, when heard.
316. If denied, defendant must immediately demur or plead.

SEC. 317. If granted, defendant discharged, unless the case be submitted to the same or another grand jury.
318. Effect of order for re-submission.
319. When new indictment not found.
320. Order to set aside indictment, no bar to another prosecution.

§ 313. Indictment, when set aside on motion.—The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not found, indorsed and presented, as prescribed in sections 268 and 272;

2. When a person has been permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except as provided in sections 262, 263 and 264.

What sufficient grand jury. People v. Dolan, 6 Hun, 232, ib. 493; 64 N. Y. 405; People v. Petra, 30 Hun, 98; s. c. 94 N. Y. 128; People v. Fitzpatrick, 30 Hun, 493; People v. Clewes, 57 How. Pr. 245; People v. Vail, ib. 81; People v. Moore, 65 id., 177; People v. Brigg, 60 id. 17; People v. Shattuck, 6 Abb. N. C. 36. Proceedings on this motion are part of judgment roll. Ch 520 Laws of 1885. Code Civ. Pro. § 485. No appeal before judgment-roll filed. People v Havens, 3 N. Y. Cr. 286. When heard. People v. Judson, 11 Daly, 1, 47. Before pleading. People v. Clements, 5 N. Y. Cr. 292. Grounds of motion. People v. Price, 6 id. 141, 145, n.; People v. Clements, 5 id. 289; People v. Gas-light Co. 6 id. 189. See People v. Bradner, 107 N. Y. 1; People v. Richmond, 5 N. Y. Cr. 97. ——— 15 N. Y. Supp. 529; People v. Callahan, 29 Hun, 580; People v. Jaehne, 4 N. Y. Cr. 161; People v. Clark, 5 N. Y. L. J. 495.

§ 314. Defendant, when precluded, etc.—If the motion to set aside the indictment be not made, the defendant is precluded from afterward taking the objections mentioned in the last section.

See Brotherton v. People, 75 N. Y. 159.

§ 315. Motion, when heard.—The motion to set aside an indictment must be heard at the time of the arraignment, unless, for good cause, the court postpone the hearing to another time.

People v. Gas Light Co. 6 N. Y. Cr. 189.

§ 316. If denied, etc.—If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

§ 317. If granted, etc.—If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if under bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him; unless the court direct that the case be re-submitted to the same or another grand jury.

People v. Clements, 5 N. Y. Cr. 289, 297

§ 318. Effect of order for re-submission.—If the court direct that the case be re-submitted, the defendant, if already in custody

must so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment.

People v. Clements, 5 N. Y. Cr. 299; People v. Price, 6 id. 145.

§ 319. **When new indictment not found.** — Unless a new indictment be found, before the next grand jury of the county or city is discharged, the court must, on the discharge of such grand jury, make the order prescribed by section 317.

§ 320. **Order to set aside indictment, etc.** — An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense.

CHAPTER VI.

DEMURRER.

SEC. 321. Only pleading for defendant, is demurrer or plea.
322. Demurrer or plea, when put in.
323. Grounds of demurrer.
324. Demurrer, how put in, and its form.
325. When heard.
326. Judgment on demurrer.
327. If allowed, judgment a bar to another prosecution, unless direction that the case be resubmitted to the same or another grand jury.
328. If resubmission not ordered, defendant discharged.
329. Proceedings, if resubmission ordered.
330. If demurrer disallowed, defendant may be permitted to plead. When he must do so, and effect of his omission.
331. When objection, forming ground of demurrer, may be taken at the trial, or in arrest of judgment.

§ 321. **Defendant's pleading**— The only pleading on the part of the defendant is either a demurrer or a plea.

People v. Petrea, 92 N. Y. 128; People v. Conroy, 97 id. 62; People v. Bradner, 107 N. Y. 1, 9.

§ 322. **Demurrer or plea, when put in.**— Both the demurrer and the plea must be put in, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

People v. Upton, 38 Hun, 107; 4 N. Y. Cr. 455.

§ 323. **Grounds of demurrer.**— The defendant may demur to the indictment, when it appears upon the face thereof,

1. That the grand jury, by which it was found, had no legal authority to inquire into the crime charged, by reason of its not being within the local jurisdiction of the county; or

2. That the indictment does not conform substantially to the requirements of sections 275 and 276; or

3. That more than one crime is charged in the indictment within the meaning of sections 278 or 279; or

4. That the facts stated do not constitute a crime; or

5. That the indictment contains matter, which, if true, would constitute a legal justification or excuse for the acts charged, or other legal bar to the prosecution.

People *v.* Upton, 38 Hun, 107; People *v.* Kelly *et al.* 22 W'k Dig. 68. See 2 N. Y. Cr. 323; §§ 278, 279, *supra.* People *v.* Peck, 2 N. Y. Cr. 317; 18 W'k Dig. 527; People *v.* Cole, 2 N. Y. Cr. 108; People *v.* Richards, 44 Hun, 288, 5 N. Y. Cr. 370; People *v.* Ward, 3 id. 483; People *v.* Menken, 36 Hun, 90; 3 N. Y. Cr. 235; People *v.* Draper, 28 Hun, 1; 1 N. Y. Cr. 141; People *v.* D'Argencour, 38 Hun, 179; People *v.* O'Donnell, 46 id. 360; People *v.* Cooper, 3 N. Y. Cr. 119; People *v.* Durrin, 2 id. 334; People *v.* Gregg, 59 Hun, 112; People *v.* Clement, 107 N. Y. 205; People *v.* Carr, 3 N. Y. Cr. 562; People *v.* Conroy, 97 N. Y. 63; 2 N. Y. Cr. 577; 20 W'k Dig. 244; People *v.* McCarthy 110 N. Y. 309; People *v.* Fadner, 10 Abb. N. C. 462; People *v.* Tower 42 N. Y. St. Rep. 164, 165.

§ 324. **Demurrer, etc., and its form.**—The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it may be disregarded.

People *v.* McCarthy, 110 N. Y. 314.

§ 325. **When heard.**—Upon the demurrer being filed, the objections presented thereby must be heard at such time as the court may appoint.

§ 326. **Judgment on demurrer.**—The court must give judgment upon the demurrer either allowing or disallowing it; and an order to that effect must be entered upon the minutes.

When defendant can appeal. People *v.* Beman, 22 Hun, 283. No amendment. People *v.* Poucher, 30 Hun, 576. People *v.* Cooper, 3 N. Y. Cr. 119.

§ 327. **If allowed, judgment, etc.**—If the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

People *v.* Richards, 44 Hun, 278; 5 N. Y. Cr. 370; People *v.* Clements, id. 297.

§ 328. **If re-submission not ordered, etc.**—If the court do not direct the case to be re-submitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him.

See §§ 317, 318, *ante.* People *v.* Petrea, 92 N. 128; People *v.* O'Donnell, 46 Hun, 362; People *v.* Clements, 5 N. Y. Cr. 297.

§ 329 **Proceedings, etc.**—If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections 318 and 319.

People *v* Petrea, 92 N. Y. 128.

§ 330. **If demurrer disallowed, etc.**—If the demurrer be disallowed, the court must permit the defendant, at his election, to plead; which he must do forthwith, or at such time as the court may allow. If he do not plead, judgment must be pronounced against him, if the crime charged is a misdemeanor, otherwise a plea of "not guilty" must be entered.

See § 342, *post*. People *v*. Persons, 2 N. Y. Cr. 114; People *v*. Cooper, 3 id. 119; People *v*. Crotty, 30 N. Y. St. Rep. 46.

§ 331. **When objections, forming ground of demurrer, may be taken, etc.**—The objections mentioned in section 323 can only be taken by demurrer; except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a crime, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

See § 467, *post*. People *v*. Upton, 38 Hun, 107; People *v*. Buddensieck, 103 N. Y. 497; 5 N. Y. Cr. 71; People *v*. Kelly, 31 Hun, 226; 2 N. Y. Cr. 18; People *v*. Osterhout, 34 Hun, 262; People *v*. Menken, 3 N. Y. Cr. 283; People *v*. Stevens, id. 582; People *v*. McCarthy, 110 N. Y. 314; People *v*. Sullivan, 49 Hun, 333; People *v*. Tower, 42 N. Y. St. Rep. 164, 165.

CHAPTER VII.

PLEA.

SEC. 332. The different kinds of pleas.
333. Plea, how put in.
334. Its form.
335. Plea of guilty, how put in.
336. Plea of insanity.
337. Plea may be withdrawn by permission of the court.
338. What is denied by a plea of not guilty.
339. What may be given in evidence under it.
340, 341. What is deemed a former acquittal.
342. If defendant refuse to answer indictment, plea of not guilty to be entered.

§ 332. **Pleas. Plea of guilty restricted.**— There are three kinds of pleas to an indictment; a plea of (1) guilty, (2) not guilty, (3) a former judgment of conviction or acquittal of the crime charged, which may be pleaded either with or without the plea of not guilty. *But no conviction shall be had upon a plea of guilty in either of the following cases: (a.) where the crime charged is punishable by death, or (b.) where the crime charged is or may be punishable by imprisonment in a state prison for the term of life.* [AM'D CH. 384 OF 1889.]

Sub. 3, former trial and conviction, without judgment is a bar. Shepherd *v*. People, 25 N. Y. 406. See also as to pleas in bar. People *v*. Barrett, 1 Johns.

Cas 66; Id v. Olcott, 2 id. 60; People v. Cramer, 5 Pai. 171; People v. McCloskey, ib. 57; People v. Saunders, 4 id. 196; People v. Warren, 1 id. 338; People v. Allen. 1 id. 445; People v. Van Keuren, 5 id. 66; People v. Kramer, 4 id. 217; People v. Townsend, 3 Hill, 479; People v. Krumer, 1 Sheld. 540; Gardner v. People, 6 Park, 155. 190; People v. Casborus, 13 John. 351. Where wrong judgment rendered on regular conviction, can not retry. Shepherd v. People, 25 N. Y. 406; but may remit record and resentence. Hussy v. People, 47 Bar. 503. When former judgment reversed, new indictment may be found. Kelly v. People, 6 Hun, 509. See People v. Ruloff, 5 Park. 77. What is jeopardy? Canter v People, 1 Abb Dec. 305; Burns v. People, 1 Park. 182; People v. Comstock, 8 Wend. 549; O'Connell v. People, 62 How. Pr. 436; aff'd Ct. App.; Craft v. People, 15 Hun, 484. Insufficiency of evidence no plea. Hope v. People 83 N. Y. 418. People v. Petrea, 92 N. Y. 128; 30 Hun, 98; People v. Cignarale, 110 N. Y. 29; People v. Trimble, 60 Hun, 365; People v. McHale, 39 N. Y. St. Rep. 761; People v. McEwen, 67 How. 105; 2 N. Y. Cr. 307; People v. Osterhout, 34 Hun, 260; People v. Cotto, 42 N. Y. St. Rep. 713, 717.

§ 333. **Plea, how put in.**—Every plea must be oral, and must be entered upon the minutes of the court.

See § 342, *post*. People v. Petrea, 30 Hun, 98; People v. Osterhout, 34 id. 262; People v. O'Neil, 47 id. 157; People v. McHale, 39 N. Y. State Rep. 761.

§ 334. **Its form.**—The plea must be entered in substantially the following form:

1. If the defendant plead guilty to the crime charged in the indictment, "the defendant pleads that he is guilty."

2. If he plead guilty to any lesser crime than that charged in the indictment, "the defendant pleads guilty to the crime of"—(naming it).

3. If he plead not guilty, "the defendant pleads not guilty."

4. If he plead a former conviction or acquittal, "the defendant pleads that he has already been convicted (or acquitted, as the case may be), of the crime charged in this indictment, by the judgment of the court of —— (naming it), rendered at —— (naming the place), on the —— day of ——."

People v. O'Neil, 47 Hun, 157; People v. McHale, 39 N. Y. State Rep. 761.

§ 335. **Plea of guilty, etc.**—A plea of guilty can only be put in by the defendant himself in open court, except upon an indictment against a corporation; in which case it may be put in by counsel.

See Sanders v. State, 97 Ind. 147; People v. Gas-Light Co. 6 N. Y. Cr. 189; People v. Joyce, 4 id. 341.

§ 336. **Plea of insanity.**—Whenever a person, in confinement under indictment, desires to offer the plea of insanity, he may present such plea at the time of his arraignment, as a specification under the plea of not guilty.

See § 658 *post*. Prisoner is entitled to benefit of any reasonable doubt as to his sanity. Brotherton v. People, 75 N. Y., 159; People v. McCann, 16 N. Y. 70. People v. McElvaine, 125 N. Y. 600. See 2 N. Y. Cr. 338.

§ 337. Plea may be withdrawn, etc.—The court may in its discretion, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

People *v.* Joyce, 4 N. Y. Cr. 448; Pattee *v.* State, 109 Ind. 545; Com. *v.* Mahoney, 115 Mass. 151; State *v.* Oehlslager, 38 Iowa, 297.

§ 338. What is denied by plea of not guilty.— The plea of not guilty is a denial of every material allegation in the indictment.

See § 331, *ante.* Former conviction can not be given under plea of not guilty. People *v.* Benjamin, 2 Park. 201. People *v.* Bradley, 33 N. Y. St. Rep. 565; People *v.* McHale, 39 id. 761.

§ 339. What may be given in evidence under it.—All matters of fact, tending to establish a defense, other than that specified in the third subdivision of section 332, may be given in evidence under a plea of not guilty.

People *v.* Cignarale, 110 N. Y. 29; People *v.* Durrin, 2 N. Y. Cr. 333; People *v.* McHale, 39 N. Y. St. Rep. 761.

§ 340. What is deemed a former acquittal.— If the defendant were formerly acquittal on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance, without a judgment of acquittal, it is not deemed an acquittal of the same offense.

Canter *v.* People, 1 Abb. Dec. 305; People *v.* Meakim; 61 Hun, 337.

§ 341. Id.— When, however, the defendant was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance, in the indictment on which he was acquitted.

Former acquittal presumed to be on merits. Croft *v.* People, 15 Hun, 484. Canter *v.* People, 1 Abb. Dec. 305; People *v.* Barrett, 1 John. 66.

§ 342. If defendant refuse to answer indictment, etc.— If the defendant refuse to answer an indictment, by demurrer or plea, a plea of not guilty must be entered.

See § 330, *ante.* People *v.* Osterhout, 20 W. Dig. 294; 34 Hun, 262; 3 N. Y. Cr. 445; Com. *v.* McKenna, 125 Mass. 397; Ellenwood *v.* Com. 10 Metc. 222; U. S. *v.* Berger, 19 Blatchf. 249. See 107 U. S. 221; People *v.* McHale, 39 N. Y. St. Rep. 761.

CHAPTER VIII.

REMOVAL OF THE ACTION, BEFORE TRIAL.

SEC. 343. Existing writs and proceedings, to remove indictment before trial abolished.
344. When, and in what cases, indictment may be removed before trial.
345. If former trial were had, indictment may be removed before the new trial.
346. Application for removal, how made.
347. Stay of trial, how obtained, to enable defendant to apply for removal.
348. Decision on application for stay, to be indorsed on papers and filed.
349. If application for stay be denied, no other application can be made.
350. Violation of last section, a misdemeanor and contempt, and order of removal to be vacated.
351. Order of removal to be filed, and pleadings and proceedings to be transmitted.
352. Proceedings on removal, if defendant be in custody.
353. Order for removal must be filed, before a juror is sworn. Authority of the court to which indictment is removed.

§ 343. Existing writs and proceedings, to remove indictment before trial abolished.—All writs and other proceedings heretofore existing, for the removal, upon the application of the defendant, of criminal actions prosecuted by indictment, from one court to another before trial, are abolished.

People *v.* Baker, 3 Park. 187; 3 Abb. 42; People *v.* Vermilyea, 7 Cow. 109, 140, 141; Baker *v.* Munro, 6 Cow. 396; People *v.* Vail, 6 Abb. N. C. 211; People *v.* Carolin, 115 N. Y. 658.

§ 344. When and in what cases, indictment may be removed before trial.—A criminal action, prosecuted by indictment, may at any time before trial, on the application of the defendant, be removed from the court in which it is pending, as provided in this chapter, in the following cases:

1. From a court of sessions or a city court, to the court of oyer and terminer of the same county, for good cause shown;

2. From a court of oyer and terminer or sessions, or a city court, to the court of oyer and terminer of another county, on the ground that a fair and impartial trial can not be had in the county or city where the indictment is pending.

People *v.* Sessions, 62 How. P. R. 415; Thompson *v.* People, 6 Hun, 135; Dolan *v.* People, ib. 493; s. c. 64 N. Y. 485. People ex rel. Munsell *v.* Oyer, etc. 101 N. Y. 245, 251; 4 N. Y. Cr. 75; 3 How. (N. S.) 418; People *v.* Squire, 4 N. Y. Cr. 444; People *v.* Sharp, 5 id. 155; People *v.* Sammis, 3 Hun, 560; People *v.* Vermilyea, 7 Cow. 139; People *v.* Bodine, 7 Hill, 147; People *v.* Rourke, 11 Abb. N. C. 89; People *v.* Witbeck, 1 Alb. L. J. 195; People *v.* Baker, 3 Park. 181; 3 Abb. 42; People *v.* Long I. R.Co 4 Park. 602; McFarland's Case, 7 Abb. (N. S.) 348; People *v.* Myers, 2 Hun, 6; State *v.* Albee, 61 N. H. 423; 60 Am. Rep. 325; Perteet *v* People, 70 Ill. 171; People *v.* McGarvey, 56 Cal. 327; Wheeler *v.* State, 24 Wis. 52; 15 N. Y. Supp. 79.

§ 345. If former trial, etc.—If one or more trials be had, and a new trial is necessary, either by reason of the discharge of a jury without a verdict, or of the granting of a new trial, the removal may be allowed at any time before the new trial.

§ 346. Application for removal, etc.—The application for the order of removal must be made to the supreme court, at a special term in the district, upon notice of at least ten days to the district attorney of the county where the indictment is pending, with a copy of the affidavits or other papers on which the application is founded.

What affidavits must contain. People v. Bodine, 7 Hill, 147; People v. L. I. R. R. Co. 4 Park. 602; People v. Harris, 4 Den. 150; People v. Baker, 3 Park. 181; People v. Sammis, 3 Hun, 560. People v. Rourke, 11 Abb. N. C. 89; People v. Clark, 5 N. Y. L. J. 243; People v. Sessions, 10 Abb. N. C. 192; 62 How. 415.

§ 347. Stay of trial, how obtained, etc.—To enable the defendant to make the application, a judge of the supreme court may, in his discretion, upon good cause shown by affidavit, make an order staying the trial of the indictment, until the application can be made and decided.

People v. Rourke, 11 Abb. N. C. 89; People v. Sessions, 10 id. 192; 62 How. 415.

§ 348. Decision on application for stay, etc.—When an application for an order to stay the trial is made to the supreme court, it must indorse its decision on the affidavits or other papers presented, and cause them to be immediately filed with the clerk of the court, in which the indictment is pending.

§ 349. If application for stay be denied, etc.—If the application for an order to stay the trial has been made before one judge and denied, a similar application can not be made to another judge.

§ 350. Violation of last section, etc.—A violation of the last section is punishable not only as a misdemeanor, but as a comtempt of the court in which the indictment is pending; and that court must vacate an order of removal made in violation thereof.

People ex rel. Munsell v. Oyer, etc. 101 N. Y. 251; 4 N. Y. Cr. 75; 36 Hun, 277; 3 N. Y. Cr. 208.

§ 351. Order of removal, etc. — If the supreme court order the removal of the action, a certified copy of the order for that purpose must be delivered to and filed with the clerk of the court where the indictment is pending; who must thereupon transmit the same with the pleadings and proceedings in the action, including all undertakings for the appearance of the defendant or of the witnesses, or a certified copy of the same, to the court, to which the action is removed.

§ 352. Proceedings on removal, if defendant be in custody.—If the defendant be in custody, and the removal be to the court of

oyer and terminer of another county, than that where the indictment is pending, the order must provide for the removal of the defendant, by the sheriff of the county where he is imprisoned, to the custody of the proper officer of the county to which the action is removed; and he must be forthwith removed accordingly.

§ 353. **Order for removal must be filed, etc.** — An order for the removal of the action is of no effect, unless a certified copy thereof be filed, as required by section 351, before a juror is sworn to try the indictment. When thus filed, the court to which the action is removed, must proceed to trial and judgment therein.

Loomis v. People, 19 Hun, 601.

TITLE VI.

Of the Proceedings on the Indictment, before Trial.

CHAPTER I. The mode of trial.
II. Formation of the trial jury.
III. Challenging the jury.

CHAPTER I.

THE MODE OF TRIAL.

SEC. 354. Issue of fact, defined.
355. How tried.
356. Appearance.
357. Preparation for trial.

§ 354. **Issue of fact, defined.** — An issue of fact arises,

1. Upon a plea of not guilty; or

2. Upon a plea of a former conviction or acquittal of the same crime.

People v. Williams, 35 Hun, 516; 3 N. Y. Cr. 62; People v. Haight, 13 Abb. N. C. 199.

§ 355. **How tried.** — An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the supreme court, into the court of oyer and terminer of another county, as provided in the second subdivision of section 344.

Indictments before Code. Willett v. People, 92 N. Y. 29; People v. Augsbury, 97 ib. 501. People v. Williams, 35 Hun, 518; 3 N. Y. Cr. 62; People v. Penhollow, 42 Hun, 103; Twitchell v. Com. 7 Wall, 321; People v. Clark, 33 Hun, 376; People v. Haight, 11 Abb N. C. 199; Blake v. Everman, 56 Hun, 453; People v. Hall, 57 How. 342; People v. Cancemi, 18 N. Y. 128; People v. Wynehamer, 13 id. 378; People ex rel. Baldwin v. Hawes, 37 Barb. 440; State v. Davis, 66 Mo. 684; 27 Am. Rep. 387; Com. v. Costley, 118 Mass. 1; State v. Carman, 63 Iowa, 130; 50 Am. Rep. 741; State v. Albee, 61 N. H. 423; 60 Am. Rep., 325; State v. Kaufman, 51 Iowa, 578; Swart v. Kimball, 44 Mich. 443.

§ 356. Appearance. — If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if the indictment be for a felony, the defendant must be personally present.

See § 297, *ante*; and §§ 427, 434, *post*. Presence in connecting room. People *v.* Bragle, 88 N. Y. 585; s. c. 26 Hun, 378. People *v.* Palmer, 43 Hun, 407; 5 N. Y. Cr. 106; People *v.* Bonney, 19 Cal. 426; Stephens *v.* People, 19 N. Y. 549; 4 Park. 396; Tucker's Case, 5 C. H. Rec. 164; People *v.* Clark, 1 Park. 360; People *v.* Vail, 6 Abb. N. C. 206; 57 How. 81; Maurer *v.* People, 43 N. Y., 1; State *v.* Smith, 90 Mo. 37; 59 Am. Rep. 4; People *v.* Wilkes, 5 How. 105.

§ 357. Preparation for trial. — After his plea, the defendant is entitled to at least two days to prepare for his trial, if he require it.

Postponement on account of absent witnesses. People *v.* Vermilyea, 7 Cow. 369. Affidavits therefor, what to contain. Broad's Case, 3 C. H. Rec. 7; People *v.* Wilson, 3 Park. 199; People *v.* Horton, 4 ib. 222. No exception lies to refusal to postpone trial for witnesses. Eighmy *v.* People, 79 N. Y. 546; Webster *v.* People, 92 id. 422.

CHAPTER II.

FORMATION OF THE TRIAL JURY.

SEC. 358. Jurors in criminal courts.

§ 358. Jurors in criminal courts. — The trial jury is formed, as prescribed by the Code of Civil Procedure.

Qualifications of trial jurors. Code of Civil Procedure, §§ 1027–1063 inclusive. Formation of the jury. Ib. §§ 1163–1180; ib. §§ 1190, 3350, 3351. Alien not entitled to special jury. Ib. § 1190. Trial jurors in Kings county. Ib. §§ 1029, 1126–1162, 1174, 1191. Trial jurors in city and county of New York. Ib. §§ 1029, 1079–1125, 1174, 1191. Legislature may regulate manner of procuring jury. Stokes *v.* People, 53 N. Y. 164; Gardner *v.* People, 6 Park. 155. Mere irregularities in drawing jury, not prejudicial, no ground of error. Cox *v.* People, 80 N. Y. 500; People *v.* Petrea, 30 Hun, 98; s. c., 92 N. Y. 128. People *v.* Jackson, 111 N. Y. 369; People *v.* Johnson, 110 id. 140; 46 Hun, 672; Dolan *v.* People, 64 N. Y. 485; Ferris *v.* People, 35 id. 125; Friery *v.* People, 2 Keyes, 425; People *v.* Kiernan, 101 N. Y. 618; 4 N. Y. Cr. 88; 3 How. (N. S.) 264.

CHAPTER III.

CHALLENGING THE JURY.

SEC. 359. Definition and division of challenges.
360. When there are several defendants, they must unite in their challenges.
361. Challenge to the panel, defined.
362. Upon what founded.
363. When and how taken.
364. If sufficiency of facts be denied, adverse party may except. Exception, how made and tried.
365. If exception overruled, court may allow denial of challenge. If allowed, may permit challenge to be amended.
366. Denial of challenge, how made, and trial thereof.
367. Who may be examined on trial of challenge.
368. If challenge allowed, jury to be discharged. If disallowed, jury to be impaneled.
369. Defendant to be informed of his right to challenge an individual juror.
370. Kinds of challenge to individual juror.
371. Challenge, when taken.

372. Peremptory challenge.
373. Number of peremptory challenges to which defendant is entitled.
374. Definition and kinds of challenge for cause.
375. General causes of challenge.
376. Particular causes of challenge.
377. Grounds of challenge for implied bias.
378. Grounds of challenge for actual bias.
379. Exemption not a ground of challenge.
380. Causes of challenge, how stated.
381. Exceptions to challenge and denial thereof.
382. Challenge, how tried, if denied.
383. Juror challenged may be examined as a witness.
384. Rules of evidence on trial of challenge.
385. Challenges, first by defendant and then by the people.
386. Order of challenges.
387. Jury to be sworn, etc.
See note in 6 N. Y. Cr. 39.

§ 359. Definition and division of challenges.— A challenge is an objection made to trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

People v. Petrea, 30 Hun, 98, 103.

§ 360. Where there are several defendants, etc.—When several defendants are tried together they can not sever their challenges, but must join therein.

People v. McCalla, 8 Cal. 301; State v. Earle, 13 Am. Rep. 109.

§ 361. Challenge to the panel, defined.—A challenge to the panel is an objection made to all the trial jurors returned, and may be taken as well to the panal returned for the term, as to an additional panel ordered to complete the jury.

Prisoner can waive challenge to the array after it is allowed. Pierson v. People, 79 N. Y. 424. People v. Packenham, 115 N. Y. 202; People v. Jackson, 111 id. 369; Hathaway v. Helmer, 25 Barb. 29.

§ 362. Upon what founded.— A challenge to the panel can be founded only on a material departure, to the prejudice of the defendant from the forms prescribed by the Code of Civil Procedure, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

People v. Petrea, 92 N. Y. 128, 145; People v. McQuade, 22 Abb. N. C. 449. McCluskey v. People, 5 Park, 308; Gardiner v. People, 6 id. 155; People v. Fuller, 2 id. 16; People v. Jewett, 3 Wend. 314; Crane v. Dygert, 4 id. 675; Pierson v. People, 79 N. Y. 424; 18 Hun, 239; Ferris v. People, 35 N. Y. 125; Friery v. People, 2 Keyes, 424; 2 Abb. Dec. 215; People v. Kiernan, 101 N. Y. 618; 4 N. Y. Cr. 88; People v. McQuade, 110 N. Y. 284; People v. Johnson, 46 Hun, 667. See 14 N. Y. Supp. 643.

§ 363. When and how taken.— A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying distinctly the facts constituting the ground of challenge.

A challenge in the alternative is bad. Cox v. People, 19 Hun, 430; 86 N. Y. 500; People v. Petrea, 30 Hun, 98, 103; Lindsley v. People, 6 Park. 233; New York v. Mason, 1 Abb. 344; 4 E D. Smith, 142; Secord v. Burling, 1 How. 175; People v. Wilber, 39 N. Y. St. Rep. 743.

§ 364. If sufficiency of the facts be denied, etc.—If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

See § 381, *post*. Cox *v*. People, 19 Hun, 430; 80 N.Y. 500; People *v*. Petrea, 30 Hun, 98, 103; Gardiner *v*. People, 6 Park. 155; People *v*. Wilber, 39 N. Y. St. Rep. 743.

§ 365. If exception, overruled, court may allow, etc.—If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the partyexcepting, to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

People *v*. Petrea, 30 Hun, 98, 103.

§ 366. Denial of challenge, how made, and trial thereof.—If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court; and the court must proceed to try the question of fact.

People *v*. Petrea, 30 Hun, 98, 103; People *v*. Vermilyea, 7 Cow. 108; Pringle *v*. Hulse, 11 id. 432; Randall's Case, 5 C. H. Rec. 141; Gardner *v*. Turner, 9 Johns. 260; Stout *v*. People, 4 Park. 71, 132; People *v*. Wilber, 39 N. Y. St. Rep. 743.

§ 367. Who may be examined on trial of challenge.— Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

§ 368. If challenge allowed, etc.— If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, so far as the trial of the indictment in question is concerned. If the challenge be disallowed, the court must direct the jury to be impaneled.

§ 369. Defendant to be informed of his right to challenge, etc.— Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

To raise question of failure, on appeal; it must so appear. People *v*. O'Loughlin, 3 N. Y. Cr. 120; People *v*. Carpenter, 36 Hun, 315; 16 Abb. N. C. 128; 3 N. Y. Cr. 98; aff'd, 102 N. Y. 247; 4 N. Y. Cr. 185.

§ 370. **Kinds of challenges to individual juror.**— A challenge to an individual juror may be taken either by the people or by the defendant, and is either

1. Peremptory, or
2. For cause.

People *v.* Carpenter, 36 Hun, 315; People *v.* Coniff, 2 Park. 566; Walter *v.* People, 6 id. 15; 32 N. Y., 147; 18 Abb. 147.

§ 371. **Challenge, when taken.** — A challenge must be taken when the juror appears, and before he is sworn; but the court may, in its discretion, for good cause, set aside a juror at any time before evidence is given in the action.

See People *v.* Damon, 13 Wend. 351. If peremptory challenge is exhausted, fitness of juror may be raised on appeal. People *v.* Tyrrell, 3 N. Y. Cr. 142; otherwise not. People *v.* Petmecky, 2 N. Y. Cr. 450; aff'd, 99 N. Y. 415. See People *v.* Carpenter, 38 Hun, 491; 4 N. Y. Cr. 39; 36 Hun, 317; 3 N. Y. Cr. 92; 16 Abb. N. C. 130; People *v.* Beckwith, 103 N. Y., 369; 5 N. Y. Cr. 232; People *v.* McGungil, 41 Cal. 429; note on page 458 of 21 Abb. N. C.

§ 372. **Peremptory challenge.** — A peremptory challenge is an objection to a juror, for which no reason need be given, but upon which the court must exclude him.

People *v.* Judson, 11 Daly, 1, 25; Friery *v.* People, 2 Keyes, 424; People *v.* Carpenter, 38 Hun, 490; 4 N. Y. Cr. 39.

§ 373. **Id.; number of, etc.**—Peremptory challenges must be taken in number as follows:

1. If the crime charged be punishable with death, thirty;
2. If punishable with imprisonment for life, or for a term of ten years or more, twenty;
3. In all other cases, five.

People *v.* Keating, 61 Hun, 260; Stokes *v.* People, 53 N. Y. 164; Walter *v.* People, 32 id. 147; Hayes *v.* State, 120 U. S. 68; Northern P. R. Co. *v.* Herbert, 116 id. 642; Com. *v.* Dorsey, 103 Mass. 412.

§ 374. **Definition, and kinds of challenge for cause.**—A challenge for cause is an objection to a particular juror, and is either,

1. General, that the juror is disqualified from serving in any case; or
2. Particular, that he is disqualified from serving in the case on trial.

§ 375. **General causes of challenge.**—General causes of challenge are,

1. A conviction for a felony;
2. A want of any of the qualifications prescribed by the Code of Civil Procedure, to render a person a competent juror.

Sub. 2. General provisions, qualifications of trial juror. Code of Civ. Proc. §§ 1027, 1028. Disqualification of public officers. Ib. § 1029. Qualifications in Kings county. Ib. §§ 1029, 1126. Qualifications in city and county of New York. Ib. §§ 1029, 1079.

§ 376. Particular causes of challenge.—Particular causes of challenge are of two kinds:

1. For such a bias, as, when the existence of the facts is ascertained, does in judgment of law disqualify the juror, and which is known in this Code as implied bias;

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that such juror can not try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this Code as actual bias. But the previous expression or formation of an opinion or impression in reference to the guilt or innocence of the defendant, or a present opinion or impression in reference therto, is not a sufficient ground of challenge for actual bias, to any person otherwise legally qualified, if he declare on oath, that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence, and the court is satisfied, that he does not entertain such a present opinion or impression as would influence his verdict.

See note in 6 N. Y. Cr. 39; and in Abb. N. C. 453.

Sub. 2. See Thomas *v.* People, 67 N. Y. 218; People *v.* Mullin, 3 Alb. L. J. 150; Greenfield *v.* People, 74 N. Y. 277; Phelps *v.* People, 6 Hun, 401; 72 N. Y. 334; Manke *v.* People, 17 Hun, 410; Balbo *v.* People, 80 N. Y. 484; Cox *v.* People, ib. 500; Abbott *v.* People, 86 N. Y. 460; People *v.* Welch, 1 N. Y. C. R. 487; People *v.* Willett, 36 Hun, 500; People *v.* Tyrrell, 3 N. Y. Cr. 142; People *v.* Carpenter, 36 Hun, 315; id. 38 ib. 490; 102 N. Y. 234; People *v.* Otto, 36 Hun, 97; 101 N. Y. 690; People *v.* Cornette, 92 id. 85; 16 W. Dig. 442; People *v.* Casey, 96 N. Y. 118; 2 N. Y. Cr. 194; People *v.* Crowley, 102 N. Y. 237; 4 N. Y. Cr. 261; People *v.* McQuade, 110 N. Y. 284; 21 Abb. N. C. 417; People *v.* Wilson, 109 N. Y. 345; People *v.* Buddensieck, 103 id. 486; 4 N. Y. Cr. 230; People *v.* O'Neil, 109 N. Y. 251; People *v.* Clark, 102 N. Y. 735; 4 N. Y. Cr. 572; People *v.* Reavy, 38 Hun, 490; 4 N. Y. Cr. 39; People *v.* Wah Lee Mon, 37 N. Y. St. Rep. 283; Guetig *v.* State, 66 Ind. 94; 32 Am. Rep. 99.

§ 377. Grounds of challenge for implied bias.— A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the ninth degree, to the person alleged to be injured by the crime charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Bearing to him the relation of guardian or ward, attorney or client, or client of the attorney or counsel for the people or defendant, master or servant, or landlord or tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury, which has tried another person for the crime charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror, in a civil action brought against the defendant, for the act charged as a crime;

8. If the crime charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Subd. 1. See Cole v. Van Keuren, 51 How. Pr. 451; Cain v. Ingham, 7 Cow. 478; Eggleston v. Smithby, 17 John. 133.
Subd. 2. People v. McQuade, 110 N. Y. 284; 21 Abb. N. C. 417.
Subd. 6. Barclay v. People, 8 Abb. L. J. 104.
Subd. 8. People v. Damon, 13 Wend. 351; People v. Ryan, 2 Wheeler Cr. Cases, 47; Walter v. People, 32 N. Y. 147; 6 Park. 15; Gordon v. People, 33 N. Y. 511; O'Brien v. People, 36 id. 276; 3 Abb. (N. S.) 371; 48 Barb. 274; Lowenberg v. People, 5 Park. 425; People v. Wilson, 3 id. 199; People v. Carolin, 115 N. Y. 659; 2 Sil. (Ct. App.) 392; 7 N. Y. Cr. 125.
See People v. Carpenter, 38 Hun, 492; 4 N. Y. Cr. 46; People v. Ah Chung, 54 Cal. 402; People v. Clark, 62 Hun, 84.

§ 378. **Grounds of challenge for actual bias.**—A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section 376, and for no other cause.

People v. McQuade, 110 N. Y. 284; 21 Abb. N. C. 417.

§ 379. **Exemption, etc.**—An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

General grounds of exemption. Code of Civ. Pro. §§ 1030, 1031. Id. in Kings county. Ib. §§ 1127, 1128. Id. in city and county of New York. Ib. §§ 1061, 1062. See People v. Morissey, 1 Sheld. 295; Green v. State, 59 Md. 122; 43 Am. Rep. 542; United States v. Lee, 4 Mackey, 498; 54 Am. Rep. 298.

§ 380. **Causes of challenge, etc.**—In a challenge for implied bias, one or more of the causes stated in section 377 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 376 must be alleged. In either case, the challenge may be oral, but must be entered upon the minutes of the court.

See Freeman v. People, 4 Den. 131; People v. Otto, 101 N. Y. 690; 4 N. Y. Cr. 155.

§ 381. **Exceptions to challenge, etc.**—The adverse party may except to the challenge, in the same manner as to a challenge to the

panel; and the same proceedings must be had thereon, as prescribed in section 364, except that, if the challenge be allowed, the juror must be excluded. The adverse party may also orally deny the fact alleged as the ground of challenge.

§ 382. **Challenge, how tried, etc.**— If the facts be denied, the challenge must be tried by the court which must either allow or disallow the same and direct an entry accordingly on the minutes. If the challenge be allowed, the juror must be discharged.

Greenfield v. People, 74 N. Y. 277; State v. Pike, 49 N. H. 399; 6 Am Rep. 542.

§ 383. **Juror challenged may be examined, etc.**— Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness, to prove or disprove the challenge; and is bound to answer every question pertinent to the inquiry therein.

People v. Welch, 1 N. Y. Cr. 488.

§ 384. **Rules of evidence, etc.**—Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

People v. Welch, 1 N. Y. Cr. 488.

§ 385. **Order of challenges.**— Challenges to an individual juror must be taken, first by the people and then by the defendant.

People v. McQuade, 110 N. Y. 284; 21 Abb. N. C. 417, 434, 436, 454, n; People v. McGonegal, 42 N. Y. St. Rep. 310.

§ 386. **Order of challenges.**— Challenges of either party must be taken:

1. To the panel.
2. To an individual juror, for a general disqualification.
3. To an individual juror, for implied bias.
4. To an individual juror, for actual bias.
5. Peremptory.

People v. Welch, 1 N. Y. Cr. 488; see 21 Abb. N. C. 454, n.

§ 387. **Jury to be sworn, etc.**— The first twelve persons who appear, as their names are drawn and called who are proved as indifferent between the parties, and are not discharged or excused, must be sworn; and constitute the jury to try the issue.

Improper treatment of a juror by court, ground for new trial. People ex rel. Flaherty v. Neilson, 22 Hun, 1; People v. Carpenter, 102 N. Y. 238; 5 N. Y. Cr. 98.

TITLE VII.

Of the Trial.

CHAPTER I. The trial.
II. Conduct of the jury, after the cause is submitted to them.
III. The verdict.

CHAPTER I.

THE TRIAL.

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418. On indictment for libel, jury to determine law and fact.
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420. Charge to jury.
421. Jury may decide in court, or retire in the custody of officers; oath of the officers.
422. When defendant on bail appears for trial, he may be committed.

§ 388. In what order trial to proceed.—The jury having been impaneled and sworn, the trial must proceed in the following order:

1. The district attorney, or other counsel for the people, must open the case, and offer the evidence in support of the indictment;

2. The defendant or his counsel may then open his defense, and offer his evidence in support thereof;

3. The parties may then, respectively, offer rebutting testimony, but the court, for good reason, in furtherance of justice, may permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the defendant or his counsel must commence, and the counsel for the people conclude the argument to the jury;

5. The court must then charge the jury.

Withdrawal of juror People v. Barrett, 2 Cal. 304; Grant v. People, 4 Park. 527. See McFall v. People, 18 Hun, 382; Babcock v. People, 15 Hun, 347; People v. Lopez, 2 Edm. S. C. 262. Time allowed counsel discretionary. People v. Kelly, 2 N. Y. Cr. 15. Charge. People v. Petmecky, ib. 450; People v. Dumar, 106 N. Y. 505; People v. Buddensieck, 103 N. Y. 487; People v. McCallam, 3 N. Y. Cr. 189; People v. Ward, id. 483; People v. Palmer, 43 Hun, 397.

§ 389. **Defendant presumed innocent, etc.; reasonable doubt.**— A defendant in a criminal action is presumed to be innocent, until the contrary be proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Applies to mental responsibility. O'Connell v. People, 87 N. Y. 377. When burden with prisoner. Bradford v. People, 20 Hun, 309. Extent of doubt. Poole v. People, 80 N. Y. 645; Levy v. People, 80 id. 327; Mayor v. People, id. 364; Murphy v. People, 4 Hun, 102; People v. Petmecky, 2 N. Y. Cr. 450; aff'd 99 N. Y. 415; People v. Willett, 36 Hun, 500; People v. Kiernan, 3 N. Y. Cr. 247; People v. Reavey, 38 Hun, 418; People v. Cruger, id. 500; People v. Van Houter, id. 168. People v. Guidici, 100 N. Y. 503; 3 N. Y. Cr. 551; 2 E. R. 923; People v. Coleman, 1 N. Y. Cr. 1; Walker v. People, id. 7, 23; 88 N. Y. 81; Sawyer v. People, 91 id. 667; 1 N. Y. Cr. 249; Smith v. People, id. 330; People v. Moett, 23 Hun, 60; 83 N. Y. 373; People v. Newton, 3 N. Y. Cr. 406; People v. Riley, id. 374; People v. Stott, 4 id. 306; People v. Schryver, 42 N. Y. 1; People v. Riordan, 117 id. 73; People v. Stone, id. 480; People v. Briggs, 114 id. 64; People v. Pollock, 52 Hun, 613; People v. Pavlik, 7 N. Y. Cr. 30; People v. Downs, 56 Hun, 11; aff'd 123 N. Y. 558; Freund v. Paten, 10 Abb. N. C. 311; 10 Daly, 382; Davis v. Rome, etc. R. Co. 56 Hun, 372; State v. Rounds, 76 Me. 123; Dunn v. People, 109 Ill. 635; State v. Meyer, 58 Vt. 457; State v. Gann, 72 Mo. 374; Wade v. State, 71 Ind. 535; Wright v. State, 69 id. 163; Watt v. People, 126 Ill. 9; Miles v. United States, 103 U. S. 304; Com. v. Leonard, 140 Mass. 473; Cont. Ins. Co. v. Jachnichen, 110 Ind. 59; 59 Am. Rep. 194; Mead v. Husted, 52 Conn. 53; 52 Am. Rep. 554; State v. Saner, 38 Minn. 433; Shook v. Lyon, 34 N. Y. St. Rep. 21; See 7 Abb. N. C. 357, note.

§ 390. **When reasonable doubt, etc.** — When it appears that a defendant has committed a crime, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only.

People v. Downs, 56 Hun, 6; aff'd, 123 N. Y. 538; People v. Willett, 36 Hun, 500; 3 N. Y. Cr. 324; People v. Lamb, 2 Abb. (N. S.) 148.

§ 391. **Separate trials, etc.**— When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

When four are jointly indicted, three of them can not insist upon the fourth being tried with them. Armsby v. People, 2 S. C. 157; Kelly v. People, 55

N. Y. 565. District attorney determines order of separate trials Patterson v. People, 46 Barb. 625. May demand after jury empanelled. Babcock v. People, 15 Hun, 317. Witnesses against each other. People v. Satterlee, 5 Hun, 167; Taylor v. People, 12 id. 212; for each other, People v. Dowling, 84 N. Y. 478. See People v. Judson, 11 Daly, 1, 23; People v. Clark, 38 Hun, 214; 102 N. Y. 735; 4 N. Y. Cr. 575; White v. People, 32 id. 465; Klein v. People, 31 id. 229; People v. Dowling, 84 id. 484; People v. Stockham, 1 Park, 428; Wixson v. People, 5 id. 119; People v. Cotto, 42 N. Y. St. Rep. 713, 716.

§ 392. **Rules of evidence; witness under twelve years.**—The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code. [Whenever in any criminal proceedings a child actually or apparently under the age of twelve years offered as a witness does not in the opinion of the court or magistrate understand the nature of an oath, the evidence of such child may be received though not given under oath if, in the opinion of the court or magistrate such child is possessed of sufficient intelligence to justify the reception of the evidence. But no person shall be held or convicted of an offense upon such testimony unsupported by other evidence.]

33 A. L. J. 149; People v Chacon, 3 N. Y. Cr. 418; People v. Murphy, 101 N. Y. 126; 3 How. (N. S.) 469; 4 N. Y. Cr. 95; 15 Hun, 347; People v. Beach, 87 N. Y. 512; People v. Brower, 53 Hun, 219; People v. Kelly, 35 Hun, 304; 3 N. Y. Cr. 46; People v. Burns, 33 Hun, 300; 2 N. Y. Cr. 427; People v. Thayer, 1 Park. 596; Van Bokkelen v. Berdell, 41 N. Y. St. Rep. 312, 314; People v. Lewis, 42 id. 768, 772.

§ 393. **Defendant as witness.**—The defendant in all cases may testify as a witness in his own behalf, but his neglect or refusal to testify does not create any presumption against him.

Cross examination of defendant. People v. Crapo, 76 N. Y. 288; People v. Genet, 19 Hun, 91. See Stover v. People, 56 N. Y. 315; Newman v. People, 63 Barb. 630; People v. Brandon, 42 N. Y. 265; Connors v. People, 50 N. Y. 240; People v. Casey, 72 N. Y. 393; People v. Moett, 23 Hun, 60; People v. Greenfield, 23 Hun, 454; Maine v. People, 9 Hun, 113. May testify as to intent. Kerrains v. People, 60 N. Y. 221. Failure to supply evidence. Brulo v. People, 16 Hun, 119; People v. Hovey, 29 Hun, 385; 92 N. Y. 554; People v. Courtney, 94 N. Y. 490; 1 N. Y. Cr. 557; 31 Hun, 202; People v. Guidici, 100 N. Y. 507; People v. Clark, 102 id. 735; People v. Oyer, etc. 83 id. 438, 460; People v. Noelke, 94 id. 137; Ryan's case, 79 id. 594; People v. Brown, 72 id. 571; People v. Irving, 95 id. 541; Spiegal v. Hays, 118 N. Y. 661; Le Beau v. People, 34 id. 230; Great W. T. Co. v. Loomis, 32 id. 127; People v. Moett, 23 Hun, 60; 85 N. Y. 373; Ormsby v. People, 53 id. 472; People v. Crowley, 102 N. Y. 234; 4 N. Y. Cr 168; People v. Kiernan, 3. id 247; Newman v. People. 63 Barb. 630; People v. Rose, 52 Hun, 38; People v. Sweeney, 41 id. 332; 4. N. Y. Cr. 276; People v. Scully, 3 id. 244; Wright v. People, 1 id 462; People v. Beckwith, 4 id. 335; Gordon v. People, 33 N. Y. 508; Ruloff v. People, 45 id. 221.

§ 394. **Compensation of witnesses.**— The rules as to the compensation of witnesses attending trials in criminal cases, prescribed by special statutes, are continued as there defined.

See §§ 615, 731, *post*.

§ 395. **Confession of defendant, etc.**—A confession of a defendant, whether in the course of judicial proceedings or to a private person,

can be given in evidence against him unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed.

See note in 2 Sil. (Ct. App.) 512. What additional proof necessary. People v. Hennessy, 15 Wend. 147; People v. Badgley, 16 ib. 53; Silence under accusation. People v. Kelley, 55 N. Y. 565; Willett v. People, 27 Hun, 469; s. c. 1 N. Y. Cr. 255; 92 N. Y. 29; People v. Runge, 3 ib. 85; Mich. C. Works. v. Schad. ib. 71; Hendrickson v. People, 10 N. Y. 13; Duffy v. People 26 id. 588; People v Wentz. 37 id. 303; Teachout v. People, 41 id. 7; Woodford v. People 62 id. 117; Balbo v. People, 80 id. 484; Cox v. People, id 500; Moett v. People, 85 id. 373; People ex rel. Thurman v. Ryan, 88 id. 142; B'k of Attica v. Met. Nat B'k 91 id. 240; People v. Mondon, 38 Hun, 190; 103 N. Y. 211; 4 N. Y. Cr. 559; People v. McCallam, 3 id. 189; affirmed, 103 N. Y. 588; People v. Druse, id. 655; 1 Sill. (Ct. App) 186; 5 N. Y. Cr. 10; People v. McGloin, 28 Hun, 152; 91 N. Y. 241; 12 Abb. N. C. 172; People v. Kelley, 37 Hun, 161; 3 N. Y. Cr. 414; 22 W'k Dig. 79; People v. Kurtz, 42 Hun, 335; People v. Penhollow, id. 103; People v. McMahon, 15 N. Y. 384; People v. Carr, 3 N Y Cr. 578, People v. Bennett, 37 N. Y. 117; 4 Abb. (N. S) 89; People v. Fox, 121 N. Y. 449; People v. Chapleau, id. 268; People v. Murphy, 63 id. 597; O'Brien v. People, 48 Barb. 274; People v. Rogers, 18 N. Y. 9; People v. Montgomery, 13 Abb. (N. S.) 209; People v. Thayer, 1 Park. 595; Hartung v. People, 4 id. 319; People v. McCraney, 6 id. 49; People v. O'Neil, 48 Hun, 37; 5 N. Y. Cr. 302; 109 N. Y. 251; People v. Deacons, 109 id. 374; People v. Jaehne, 103 N. Y. 182; 4 N. Y. Cr. 479; People v. Beckwith, 108 N. Y. 74; People v. Sharp. 107 id. 427; People v. Kief, 58 Hun, 337; People v. Cassidy, 39 N. Y. St. Rep. 28; People v. Stott, 5 N. Y. Cr. 61; People v. Myers, id. 120.

§ 396. Evidence on trial for treason. — Upon a trial for treason the defendant can not be convicted, except upon the testimony of two witnesses to the same overt act, or of one witness to one overt act, and another witness to a different overt act of the same treason. But if two or more distinct treasons, of different kinds, be alleged in the indictment, two witnesses to prove different treasons are not sufficient to warrant a conviction

§ 397. Id. — Upon a trial for treason, evidence cannot be admitted, of an overt act not expressly charged in the indictment; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

§ 398. Evidence on trial for conspiracy. — Upon a trial for a conspiracy, in a case where an overt act is necessary to constitute the crime, the defendant cannot be convicted, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the indictment, may be given in evidence.

1 N. Y. Cr. R. L. 337.

§ 399. Conviction can not be had on testimony of accomplice, etc.—A conviction can not be had upon the testimony of an accomplice

unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime.

See note in 2 Sil. (Ct. App.) 512; section 142 of Penal Code. See People v. Davis, 21 Wend. 309; People v. Costello, 1 Den. 83; Lindsay v. People, 5 Hun, 101; 63 N. Y. 143; People v. Williams, 29 Hun, 520; People v. Smith, 28 ib., 625; People v. Winshaw, ib. 395; People v. Stone, ib. 245; 1 N. Y. Cr. 123; aff'd 2 N. Y. Cr. 447. Woman submitting to abortion not accomplice. People v. Vedder, 98 N. Y. 630; aff'g 34 Hun, 230. Court must so charge. People v. Thompson, 21 W. Dig. 345; People v. Ryland, 97 N. Y. 126; 28 Hun, 568; People v. Courtney, id. 593; 1 N. Y. Cr. 64; People v. Noelke, 94 N. Y. 197; 29 Hun, 465; People v. Hooghkerk, 96 N. Y. 149; 2 N. Y. Cr. 204; 67 How. 256; Stape v. People, 85 N. Y. 390; People v. Sherman, 103 id. 513; People v. Everhart, 104 id. 591; 2 Sil. (Ct. App.) 507; People v. Ogle, 104 N. Y. 511; 6 N. Y. Cr. 165; Berry v. People, 1 id. 43, 57; People v. Runge, 3 id. 85; People v. Powell, 4 id. 585; People v. Myers, 5 id. 120; People v. Jaehne, 103 N. Y. 182; People v. O'Neil, 109 N. Y. 251; 48 Hun, 37; 5 N. Y. Cr. 502; People v. Elliott, 106 N. Y. 292; 7 N. Y. Cr. 126; People v. Plath, 100 N. Y. 592; People v. Ricker, 7 N. Y. Cr. 22; People v. Thompson, 3 id. 562; Fraser v People 43 Barb. 306; People v. Haynes, 55 id. 450; 38 How. 369; People v Lawton, 56 Barb. 126; Maine v. People, 9 Hun, 113; People v. Kerr, 6 N. Y. Cr. 406; People v. Bliven, 112 N. Y. 79; People v. Drown, 38 N. Y. St. Rep. 986; People v. Emerson, 20 id. 18; 6 N. Y. Cr. 157; Commonwealth v. Drake, 124 Mass. 21; State v. Myers, 82 Mo. 558; 52 Am. Rep. 389; People v. White, 62 Hun, 115.

§ 400. **If testimony show higher offense, etc.**—If it appear by the testimony, that the facts proved constitute a crime of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed, or continued on or admitted to bail, to answer any new indictment which may be found against him for the higher offense.

People v. Dartmore, 48 Hun, 323; see 2 N. Y. Supp. 311.

§ 401. **If new indictment not found, to be tried on the original indictment.**—If an indictment for the higher crime be dismissed by the grand jury, or be not found at or before the next term, the court must again proceed to try the defendant on the original indictment.

§ 402. **Court may discharge, etc.**—The court may also direct the jury to be discharged, where it appears that it has not jurisdiction of the crime, or that the facts, as charged in the indictment, do not constitute a crime.

§ 403. **Proceedings, if jury discharged, etc.**—If the jury be discharged, because the court has not jurisdiction of the crime charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the state, territory or district where the crime was committed.

§ 404. Proceedings, etc., when offense committed in the state.—If the crime were committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the crime be a misdemeanor only, it may admit him to bail, in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint appear in such court to await a warrant from the proper county for his arrest.

§ 405. Id.—In the case provided for in the last section, the clerk must forthwith give notice to the district attorney of the proper county, that the defendant has been so committed or held to bail.

§ 406. Id.—If the defendant be not arrested, as provided in section 404, on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be; and the sureties in the undertaking mentioned in that section must be discharged.

§ 407. Id.—If the defendant be arrested, the same proceedings must be had thereupon, as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

§ 408. Proceedings, if jury discharged, etc.—If the jury be discharged, because the facts as charged do not constitute a crime, the court must order the defendant, if in custody, to be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment can be framed, upon which the defendant can be legally convicted; in which case, it may direct that the case be re-submitted to the same or another grand jury.

Case v. People, 76 N. Y. 242.

§ 409. Id.—If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections 318 and 319.

§ 410. When evidence, etc., court may advise acquittal, etc.—If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant and they must follow the advice.

See Babcock v. People, 15 Hun, 347; Case v. People, 6 Abb. N. C. 151; Howell v. People, 5 Hun, 620; 69 N. Y. 607; People v. McCallam, 3 N. Y. Cr. 189; Sullivan v. People, 27 Hun, 37; People v. Livingston, id. 107; People v. Bennett, 49 N. Y. 137; People v. Dohring, 59 id. 381; Duffy v. People, 26 id. 588; People v. Trimble, 42 N. Y. St. Rep. 717.

§ 411. **View of premises, etc.**—When, in the opinion of the court, it is proper that the jury should view the place in which the crime is charged to have been committed, or in which any material fact occurred, it may order the jury to be conducted, in a body, under charge of proper officers, to the place, which must be shown to them by a judge of the court, or by a person appointed by the court for that purpose.

People v. Tyrrell, 3 N. Y. Cr. 142; People v. Johnson, 110 N. Y. 143; 46 Hun, 673; People v. Buddensieck, 103 N. Y. 487; 501; People ex rel. Munsell v. Oyer, etc. 4 N. Y. Cr 70; 101 N. Y. 245; 36 Hun, 279; 3 N. Y. Cr. 215; People v. Palmer, 43 Hun, 407; 5 N. Y. Cr. 106; Eastwood v. People, 3 Park. 53; People v. Thompson, 3 N. Y. Cr. 563.

§ 412. **Duty of officer, etc.**—The officers, mentioned in the last section, must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

People v. Johnson, 110 N. Y. 143; 46 Hun, 672; 27 W. Dig. 519; People v. Palmer, 43 Hun, 401; 5 N. Y. Cr. 106.

§ 413. **Knowledge of juror, etc.**—If a juror have any personal knowledge, respecting a fact in controversy in a cause, he must declare it in open court, during the trial. If, during the retirement of the jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

§ 414. **Jurors may be permitted to separate, etc.**—The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of proper officers. Such officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

People v. Johnson, 46 Hun, 672; People v. Douglass, 4 Cow. 26; People v. Frost, 5 Park. 53; People v. Montgomery, 13 Abb. (N. S.) 208; People v. Reagle, 60 Barb. 527; Stephens v. People, 19 N. Y. 549; State v. State, 64 Miss. 644; 60 Am. Rep. 70; Henning v. State, 106 Ind. 386; 55 Am. Rep. 756; Early v. State, 1 Tex. App. 218; 28 Am. Rep. 409.

§ 415. Jurors not to converse, etc.—The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court, that it is their duty not to converse among themselves on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them.

People *v* Draper, 28 Hun, 1; 1 N. Y. Cr. 138; 15 W. D. 384, People *v.* O'Laughlin. 3 N. Y Cr. 120; People *v.* Rugg, 98 N Y., 537; 3 N. Y. Cr. 183; People ex rel. Mansell *v.* Oyer, etc. 36 Hun, 279; 3 N. Y. Cr. 211; People *v.* Reavey, 38 Hun, 424; 4 N. Y. Cr. 17.

§ 416. Proceedings, etc.—If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged, and another jury to be then or afterward impaneled.

Trial must be had by twelve jurors and defendant can not waive right. Cancemi *v.* People, 18 N. Y. 128. Sleepy juror. People *v.* Morissey, 1 Sheld. 295. Exempt juror. Ib. See Goersen *v.* Com. 106 Penn. St. 477; 51 Am. Rep. 533

§ 417. Court to decide questions of law, etc.— The court must decide all questions of law which arise in the course of the trial.

It is error to submit a question of law to the jury. Glaucus *v.* Black, 67 N. Y. 563; People *v* Rego 36 Hun, 131; 3 N. Y Cr. 277; People *v.* O'Neil, 49 Hun, 422; Hall *v.* Suydam, 6 Barb. 83; Cumpston *v.* McNair, 1 Wend. 457; Pangburn *v.* Ball, id. 345; Miller *v.* Ins. Co. 2 E. D. Smith, 268.

§ 418. On indictment for libel, etc.— On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

Art. 1, § 8, N. Y. Const. People *v.* Croswell, 3 John. Cases, 337.

§ 419. In all other cases, court to decide questions of law, etc.— On the trial of an indictment for any other crime than libel, questions of law are to be decided by the court, saving the right of the defendant to except; questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

People *v* Kelly, 35 Hun, 295. See People *v.* Pine, 2 Barb. 566; People *v.* Taylor, 3 N. Y Cr. 297, People *v* Upton, 38 Hun 109; McKenna *v.* People, 81 N. Y. 360, Allis *v.* Leonard, 58 id. 291; People *v.* Finnegan, 1 Park. 147; People *v.* Thayer, id. 596; People *v.* Howell, 69 N. Y. 607; 5 Hun, 620; Duffy *v.* People, 26 N. Y. 589; People *v.* McCallam, 103 id. 587; People *v.* Dishler, 38 Hun, 179.

§ 420. Charge to jury.—In charging the jury, the court must state to them, all matters of law which it thinks necessary for their information in giving their verdict; and must, if requested, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

See People v. Moett, 23 Hun, 60. Court may limit argument. People v. Kelley, 2 N. Y. Cr. L. 15. Can not direct verdict of guilty. Howell v. People, 5 Hun, 620; s. c. 69 N. Y. 607. Jury may inquire as to punishment People v. Cassiano, 30 Hun, 368. Error how cured. People v. Greenfield, 23 Hun, 454; s. c. 85 N. Y. 75; People v. McCallam, 3 N. Y. Cr. 189; 103 N. Y. 587; People v. Elmore, 3 N. Y. Cr. 264; People v. Petmecky, 99 N. Y. 415; 2 N. Y. Cr. 450; aff'd, 3 id. 288; People v. Rego, 36 Hun, 129; People v. Kelly, 35 Hun, 295; People v. Thompson, 21 W. Dig. 345; People v. Kiernan, 3 N. Y. Cr. 247. Walker v. People, 1 N. Y. Cr. 7, 22; Berry v. People. 77 N. Y. 588; 1 N. Y. Cr. 43, People v. Wiggins, id. 290; People v. Carpenter, 4 id. 39, 177; People v. Zimmerman, id. 472; People v. Bragle, 88 N. Y. 585; 63 How. 143; People v. Upton, 38 Hun, 109; People v. Dishler, id 179; People v. McInerney, 5 N. Y. Cr. 47; United States v. Curtis, 11 Abb. N. C. 1; People v. O'Neil, 112 N. Y. 363; People v. Dimick, 107 id. 13; Allis v. Leonard, 58 id. 291; Winne v McDonald, 39 id. 239; Hart v. Ryan, 6 N. Y. Supp. 924; O'Connell v. People, 87 N. Y. 377; 62 How. 436; People v. Gray, 5 Wend. 289.

§ 421. Jury may decide, etc.—After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

When jury separate without authority, may be discharged and new trial had. People v. Reagle, 60 Barb. 527. People ex rel. Choate v. Barrett, 56 Hun, 351; 24 Abb. N. C. 432; People v. Beckwith, 108 N. Y 67; 7 N. Y. Cr. 160; People v. Kelly, 94 N. Y. 526; People v. Draper, 28 Hun, 1; 1 N. Y. Cr. 138; People v. Riley, 3 id. 374.

§ 422. When defendant on bail appears for trial, he may be committed.—When a defendant, who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

CHAPTER II.

CONDUCT OF THE JURY, AFTER THE CAUSE IS SUBMITTED TO THEM.

SEC. 423. Room and accommodations for the jury after retirement, how provided.
424. Accommodations for the jury, when kept together during the trial, or after retirement.
425, 426. What papers the jury may take with them.
427. May return into court, for information.
428. When jury to be discharged before agreement.
429. Reason for discharge.
430. When jury discharged or prevented from giving a verdict, cause to be again tried.
431. Court may adjourn during absence of jury, as to other business, but deemed open till verdict rendered or jury discharged
432. Final adjournment of court discharges jury.

§ 423. Room and accommodations for the jury, etc.—A room must be provided by the supervisors of the county (or if the trial be

in a city court, by the corporate authorities of the city), for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the supervisors or corporate authorities neglect this duty, the court may order the sheriff to perform it; and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Reading report of trial. People v. Gaffney, 1 Sheld. 304. Presence of officers in jury room. People v. Draper, 28 Hun, 1; not ground for new trial.

§ 424. **Accommodations for the jury, etc.**— While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county (or if the trial be in a city court, at the expense of the city), with suitable and sufficient food and lodging.

§ 425. **What papers the jury may take with them.**— The court may permit the jury, upon retiring for deliberation, to take with them any paper or article which has been received as evidence in the cause, but only upon the consent of the defendant and the counsel for the people.

People v. Draper, 28 Hun, 1; 1 N. Y. Cr. 188; People v. Seeley, 3 id. 228.

§ 426. **Id.**— The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Can not use notes of presiding judge. Mitchell v. Carter, 14 Hun, 448. People v. Kelly, 94 N. Y. 526; 2 N. Y. Cr. 15; aff'g, 31 Hun, 225.

§ 427. **May return into court for information.**—After the jury have retired for deliberation, if there be a disagreement between them, as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given after notice to the district attorney and to the counsel for the defendant, and in cases of felony, in the presence of the defendant.

Instructions to jury can only be given when defendant present. Maurer v. People, 43 N. Y. 1. Communications can not be sent to jury after retiring, even by consent. They must be brought into court. Plunkett v. Appleton, 51 How. Pr. 469. Magistrate can not send answer to communication from jury. Plunkett v. Appleton, 9 J. & Sp. 159; Gillotte v. Jackson, id. 308. See also Mahoney v. Decker, 18 Hun, 365; People v. Cassiano, 30 Hun, 388; People v. Kelly, 2 N. Y. C. R. 15; 17 W. Dig. 499. People v. Moore, 50 Hun, 359; Cornish v. Graff, 36 id. 164; People v. Ryan, 55 id. 217; Wood v. People, 1 id. 336; People v. Kennedy, 57 id. 584; Rolls v. State, 53 Miss. 391; Roberts v. State, 111 Ind. 342.

§ 428. When jury to be discharged before agreement.—After the jury have retired to consider of their verdict, they can be discharged before they shall have agreed thereon only in the following cases:

1. Upon the occurrence of some injury or casualty affecting the defendant, the jury or some one of them, or the court, rendering it inexpedient to keep them longer together; or

2. When after the lapse of such time as shall seem reasonable to the court, they shall declare themselves unable to agree upon a verdict; or

3. When, with the leave of the court, the public prosecutor and the counsel for the defendant consent to such discharge.

It is error for the court to constrain jury by saying they must agree or no discharge. Slater *v.* Mead, 53 How. Pr. 57. See Berry *v.* People, 1 N. Y. Cr. 43, 57. See further People ex rel. Flaherty *v.* Neilson, 22 Hun, 1; Cranston *v.* Railroad Co. 103 N. Y. 614; Erwin *v.* Hamilton, 50 How. 33; Huntoon *v.* Russell, id. 155; State *v.* Lawrence, 38 Iowa, 51; State *v.* Bybee, 17 Kan. 462; Pierce *v.* Pierce, 38 Mich. 412.

§ 429. Reason for discharge.—Whenever the jury is discharged without a verdict, the reason for the discharge must be entered on the minutes.

§ 430. When jury discharged, etc., cause to be re-tried.—In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

People *v.* Reagle, 60 Barb. 527; People *v.* Goodwin, 18 John. 187; People *v.* Denton, 2 John. Cases, 275.

§ 431. Court may adjourn, etc.—While the jury are absent, the court may adjourn from time to time, as to other business; but it is nevertheless deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

See § 34 of Code of Civil Pro. People *v.* Sullivan, 115 N. Y. 185; People *v.* Jackson, 111 id. 362; People *v.* Clews, 4 Abb. N. C. 266.

§ 432. Final adjournment of court discharges jury.—A final adjournment of the court discharges the jury, but any term of a court may be continued for the purpose of finishing a trial or receiving a verdict.

People *v.* Everhardt, 104 N. Y. 591; 2 Sil. (Ct. App.), 506.

CHAPTER III.

THE VERDICT.

SEC. 433. When the jury have agreed, to be brought into court and their names called. If all do not appear, jury to be discharged and cause again tried.
434. In felony, defendant must be present. In misdemeanor, verdict may be rendered in his absence.
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438. Special verdict.
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450. Polling the jury.
451. Recording the verdict.
452. Defendant, when to be discharged or detained after acquittal.
453. Proceedings upon general verdict of conviction, or a special verdict.
454. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict. Commitment of defendant to state lunatic asylum.

§ 433. When the jury have agreed, etc.—When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that event, the cause may be again tried, at the same or another term.

§ 434. In felony, defendant must be present, etc.—If the indictment be for a felony, the defendant must, before the verdict is received, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

See §§ 297, 427, *ante*. People *v.* Wilson, 109 N. Y. 345; Safford *v.* People, 1 Park. 474; Son *v.* People, 12 Wend. 344; People *v.* Perkins, 1 id. 91; People *v.* Wilkes, 5 How 105; State *v.* Jenkins, 84 N. C. 812; 37 Am. Rep. 643; State *v.* Epps, 76 N. C. 55; Barton *v.* State, 67 Ga. 653; 44 Am. Rep. 743; Smith *v.* State, 51 Wis. 615; 37 Am. Rep. 845.

§ 435. Manner of taking the verdict — If the jury appear, they must be asked by the court or the clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they must, on being required, declared the same.

Verdict can not be received in absence of justices. Hinman *v.* People, 13 Hun, 266.

§ 436. Verdict may be general or special.— The jury may either render a general verdict, or when they are in doubt as to the legal

effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

See § 10 of Penal Code. Under general verdict of guilty, sentence for the highest offense charged in indictment is proper. Hawker *v.* People, 75 N. Y. 487. See People *v.* Bork, 1 N. Y. Cr. 393. Special verdict. Miller *v.* People, 25 Hun, 473. People *v.* Rugg, 98 N. Y. 537, 551; 3 N. Y. Cr. 182; People *v.* Taylor, id. 302; People *v.* Bruno, 6 Park. 657; People *v.* McGeery, id. 653; Conkey *v.* People, 5 id. 31; 1 Abb. Dec. 418.

§ 437. **General verdict.**—A general verdict upon a plea of not guilty is either "guilty" or "not guilty;" which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

People *v.* Rugg, 98 N. Y. 537, 551; 3 N. Y. Cr. 182; People *v.* Taylor, id. 302; People *v.* Burch, 5 id. 32; People *v.* Bork, 1 id. 393; People *v.* Livingston, 27 Hun, 105; 63 How. 242; Polinsky *v.* People, 11 Hun, 390; 73 N. Y. 65; Hawker *v.* People, 75 id. 487; People *v.* Trimble, 60 Hun, 365; affirmed, 42 N. Y. St. Rep. 716, 718.

§ 438. **Special verdict.** A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and these conclusions of fact must be so presented, as that nothing remains to the court, but to draw from them conclusions of law.

13 W. Dig. 260; Miller *v.* People, 25 Hun, 473; People *v.* Taylor, 3 N. Y. Cr. 302; People *v.* Hale, 1 id. 533; People *v.* Dowling, 84 N. Y. 478.

§ 439. **Id.; how rendered.**—The special verdict must be reduced to writing, by the jury or in their presence, entered upon the minutes of the court, read to the jury, and agreed to by them, before they are discharged.

People *v.* Taylor, 3 N. Y. Cr. 302.

§ 440. **Id.**—The special verdict need not be in any particular form, but is sufficient, if it present intelligibly the facts found by the jury.

People *v.* Hale, 1 N. Y. Cr. 533.

§ 441. **Id.; how brought to argument.**—The special verdict may be brought to argument by either party, upon five days' notice to the other, at the same or another term of the court; and upon the hearing thereof, the counsel for the defendant may conclude the argument.

§ 442. **Judgment thereon.**—The court must give judgment upon the special verdict as follows:

1 If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted, under that indictment, as provided in sections 444 and 445, judgment must be given accordingly; but if otherwise, judgment of acquittal must be given;

2. If the plea be a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

People v. Trimble, 42 N. Y. St. Rep. 716, 718; People v. Burch, 5 N. Y. Cr. 32.

§ 443. **When special verdict defective, etc.**—If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

§ 444. **Upon indictment for crime consisting, etc.**—Upon an indictment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the crime.

See § 390, *ante*; § 35 of Penal Code. Petit larceny on indictment for grand. People v. McTameny, 17 W. D. 492; 30 Hun, 505; 13 Abb. N. C. 55; 1 N. Y. Cr. 437; 66 How. 70; People v. Taylor, 3 N. Y. Cr. 302; People v. Palmer, 43 Hun, 404; 5 N. Y. Cr. 105; People v. Meegan, 104 N. Y. 531; People v. Sullivan, 4 N. Y. Cr. 193; People v. McDonald, 49 Hun, 68; People v. McDonnell, 92 N. Y. 657; 1 N. Y. Cr. 366; People v. Willson, 109 N. Y. 347; Abbott v. People, 86 id. 460; People v. Downs, 56 Hun, 6; People v. McCallam, 3 N. Y. Cr. 199; People v. Thompson, 41 N. Y. 1; Ruloff v. People, 45 id. 213; People v. Lawton, 56 Barb. 126; People v. Snyder, 2 Park. 23; People v. Jackson, 3 Hill, 92; Nevins v. People, 61 Barb. 307; People v. Didien, 17 How. 224.

§ 445. **In other cases, jury may convict, etc.** — In all other cases the defendant may be found guilty of any crime, the commission of which is necessarily included in that with which he is charged in the indictment.

See People v. Jackson, 3 Hill, 92; People v. McTameney, 30 Hun, 505; 13 Abb. N. C. 55; 1 N. Y. Cr. 437; 66 How. 70; 17 W. D. 492; People v. Dowling, 1 N. Y. Cr. 531; People v. Palmer, 43 Hun, 406; People v. McDonald, 49 id. 68; People v. Kennedy, 57 id. 535; People v. Meegan, 104 N. Y. 531.

§ 446. **On indictment against several, etc.**—On an indictment against one or more, if the jury can not agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly; and the case, as to the rest, may be tried by another jury.

§ 447. In what cases court may direct a reconsideration of the verdict. — When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Root *v.* Sherwood, 6 John. 68; Blackley *v.* Sheldon, 7 id. 34; Hegeman *v.* Cantrell, 40 Supr. 385.

§ 448. Id. — If the jury render a verdict which is neither a general nor a special verdict, as defined in sections 437 and 438, the court may, with proper instructions as to the law, direct them to reconsider it; and it can not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and leave the judgment to the court.

§ 449. When judgment may be given upon an informal verdict. — If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant, upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

People *v.* Burch, 5 N. Y. Cr. 32.

§ 450. Polling the jury. — When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party; in which case they must be severally asked whether it is their verdict; and if any one answer in the negative, the jury must be sent out for further deliberation.

People *v.* Burch, 5 N. Y. Cr. 32; Leighton *v.* People, 88 N. Y. 117; 10 Abb. N. C. 261.

§ 451. Recording the verdict.—When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

§ 452. Defendant, when to be discharged or detained after acquittal. — If judgment of acquittal be given on a general verdict,

and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given; except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred, in the same manner and with the like effect as provided in sections 408 and 409.

People v. Cruger, 38 Hun, 500; People v. Fuller, 12 Abb. N. C. 196.

§ 453. **Proceedings upon general verdict, etc.**—If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money be deposited instead of bail, it must be refunded to the defendant.

People v. Trimble, 40 Hun, 365.

§ 454. **When defendant acquitted on the ground of insanity, etc.**—When the defense is insanity of the defendant the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court must, thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the state lunatic asylum, until he becomes sane.

People ex rel. Mooney v. Walsh, 21 Abb. N. C. 300, n.

TITLE VIII.

Of the Proceedings after Trial and before Judgment.

CHAPTER I. Bill of exceptions.
II. New trials.
III. Arrest of judgment.

CHAPTER I.

BILL OF EXCEPTIONS.

SEC. 455. In what cases.
456. By whom settled, and how filed.
457. To be settled at the trial, or the point noted in writing.
458, 459. When and how settled, after the trial.
460. Enlarging the time therefor.
461. Effect of not serving exceptions or amendments, within the time prescribed.

§ 455. **In what cases.**—On the trial of an indictment, exceptions may be taken by the defendant, to a decision of the court, upon a

matter of law, by which his substantial rights are prejudiced and not otherwise, in any of the following cases:

1. In disallowing a challenge to the panel of the jury;

2. In admitting or rejecting testimony on the trial of a challenge for actual bias to any juror who participated in the verdict, or in allowing or disallowing such challenge;

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

People *v.* Willett, 36 Hun, 500; People *v.* Petmecky, 2 N. Y. Cr. 450; aff'd 99 N. Y. 415; People *v.* Guidici, 100 N. Y. 508; People *v.* McQuade, 110 N. Y. 284; 21 Abb. N. C. 418, 439, 447; People *v.* Palmer, 109 N. Y. 419; 5 N. Y. Cr. 105; People *v.* Petrea, 1 id. 203; People *v.* Welch, id. 488; Walker *v.* People, id. 7; Berry *v.* People, id. 48.

§ 456. **By whom settled and how filed.**—A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk.

People *v.* Buddensieck, 103 N. Y. 478; Briggs *v.* Waldron, 83 id. 582; People *v.* Bradner, 107 id. 1; 44 Hun, 233; People *v.* McQuade, 110 N. Y. 284.

§ 457. **To be settled, etc.**—The bill of exceptions must be settled at the trial unless the court otherwise direct. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added to, until it is made comformable to the truth.

§ 458. **When and how settled, after the trial.**—If the bill of exceptions be not settled at the trial it must be prepared and served, within five days thereafter, on the district attorney, who may, within five days, serve on the defendant or his counsel, amendments thereto. The defendant may then, within five days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, whether in or out of court, not less than five nor more than ten days thereafter, to have the bill of exceptions settled.

People *v.* Bradner, 44 Hun, 233.

§ 459. **Id.**—At the time appointed, the judge must settle and sign the bill of exceptions.

People *v.* Bradner, 44 Hun, 235; 107 N. Y. 1.

§ 460. **Enlarging the time therefor.**—The time for preparing the bill of exceptions or the amendments thereto, or for settling the same, may be enlarged by consent of the parties, or by the presiding judge, or by a judge of the supreme court, but by no other officer.

§ 461. Effect of not serving exceptions or amendments, etc. — If the bill of exceptions be not served within the time prescribed in section 458, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served, and the parties omit, within the time limited by section 458, the one to prepare amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, and the other to the amendments.

CHAPTER II.

NEW TRIALS.

SEC. 462. New trial.
463. When granted.
464. Effect of granting new trial.
465. In what cases granted.
466. Application, when to be made.

§ 462. New trial. — A new trial is a re-examination of the issue, in the same court, before another jury, after a verdict has been given.

See § 544, *post*. People *v.* Palmer, 43 Hun, 409; 5 N. Y. Cr. 109; People *v.* Beckwith, 42 Hun, 367; 5 N. Y. Cr. 233; People *v.* Clark, 1 Sil. (Ct. App.) 166; 102 N. Y. 735, 736.

§ 463. When granted. — A new trial can be granted by the court in which the former trial was had, only in the cases provided in section 465.

People *v.* Palmer, 43 Hun, 409; 5 N. Y. Cr. 109; People *v.* Draper, 28 Hun, 3; People *v.* Bradner, 107 N. Y. 1; 44 Hun, 233; People *v.* Majone, 91 N. Y. 211; 1 N. Y. Cr. 94; 16 W. Dig. 199; affirming, 12 Abb. N. C. 187; 16 W. Dig. 86; People *v.* Trezza, 128 N. Y. 532.

§ 464. Effect of granting new trial. — The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict can not be used or referred to, either in evidence or in argument.

People *v.* Palmer, 43 Hun, 409; 5 N. Y. Cr. 109; 109 N. Y. 413; People *v.* Upton, 38 Hun, 110; People *v.* Cignarale, 110 N. Y. 33; People *v.* Greenwall, 115 id. 526; Hatch *v.* State, 8 Tex. App. 416; 34 Am. Rep. 751.

§ 465. In what cases granted. — The court in which a trial has been had upon an issue of fact has power to grant a new trial, when a verdict has been rendered against the defendant, by which his substantial rights have been prejudiced, upon his application, in the following cases:

1. When the trial has been had in his absence, if the indictment be for a felony;

2. When the jury has received any evidence out of court, other than that resulting from a view, as provided in section 411;

3. When the jury have seperated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5. When the court has misdirected the jury in a matter of law, or has refused to instruct them as prescribed in section 420; and the defendant has, at the trial, excepted to such misdirection or refusal;

6. When the verdict is contrary to law or clearly against evidence;

7. When it is made to appear, by affidavit, that upon another trial, the defendant can produce evidence such as if before received would probably have changed the verdict; if such evidence has been discovered since the trial, is not cumulative; and the failure to produce it on the trial was not owing to want of diligence.

See §§ 527, 528, *post* Subd. 2. Eastwood *v.* People, 14 N. Y. 562; 3 Park. 25; People ex rel. Choate *v.* Barrett, 56 Hun, 351; 18 Civ. Pro. 230; 8 N. Y. Cr. 13; aff'd 121 N. Y. 678; People *v.* Tyrrell, 3 N. Y. Cr. 142; People *v.* Palmer, 43 Hun, 407; 5 N. Y. Cr. 106; 109 N. Y. 413; People *v.* Johnson, 46 Hun, 667; 110 N. Y. 135.

Subd. 3. People *v.* Schad, 58 Hun, 573; People *v.* Menken, 36 id. 91; People *v.* Kelly, 94 N. Y. 526; 2 N. Y. Cr. 18; People *v.* Seeley, 37 Hun, 190; 3 N. Y. Cr. 252; People *v.* Riley, id. 384; People *v.* Montgomery, 13 Abb. (N. S.) 207; People *v.* Gaffney, 14 id. 36; 50 N. Y. 424; People *v.* Draper, 28 Hun, 1; Ostrander *v.* People, id. 46; Wiggins *v.* Downer, 67 How. 65; Eastwood *v.* People, 14 N. Y. 562; 3 Park. 25; Wilson *v.* People, 4 id. 619; People *v.* Hartung, id. 256; 17 How. 85; Mitchell's Case, 1 C. H. Rec 147; People *v.* Morrissey, 1 Sheld. 295

Subd. 4. Cochlin *v.* People, 93 Ill. 410; Williams *v.* State, 15 Lea, 129; 54 Am. Rep. 404.

Subd. 5 People *v.* Gray, 5 Wend. 289; Eggler *v.* People, 56 N. Y. 642; People *v.* Casey, 96 id. 116; 2 N. Y. Cr. 194

Subd. 6. Sawyer *v.* People, 27 Hun, 286; 14 W. Dig. 534; Manuel *v.* People, 48 Barb 548; People *v.* Stokes; 2 N. Y. Cr. 382; People *v.* Shay, 4 Park. 344; Rogers *v.* People, 3 id. 632; People *v.* Mangano, 29 Hun, 263.

Subd. 7. People *v.* Hovey, 30 Hun. 354; 1 N Y. Cr. 324; 93 N. Y. 651; People *v.* Leighton, 1 N. Y. Cr. 468; People *v.* Lane, 31 Hun, 13; 1 N. Y. Cr. 554; People *v.* Beckwith, 42 Hun, 366; People *v.* Stokes, 2 N. Y. Cr 382; Anderson *v.* Market National Bank, 66 How. 8; Geneva, etc. R. Co. *v.* Sage, 35 Hun, 95; People *v.* Mack, 2 Park, 673; People *v.* Jones, 25 W. Dig 541; People *v.* Bradner, 107 N. Y. 1; People *v.* Trezza, 128 N. Y. 532.

See People *v.* Osterhout, 3 N. Y. Cr. 446; People *v.* Wenthworth, 4 id. 209; 3 id 111; People *v.* Joyce, 4 id. 344; People *v.* Kelly, 31 Hun, 225; Dowling *v.* People, 81 N. Y. 478.

§ 466. **Application, when to be made.**—The application for a new trial must be made before judgment, except *an application made under subdivision seven of section four hundred and sixty-five, which may be made at any time within one year, and* except in case of a sentence of death, when the application may be made at any time before execution, and in case the court before which the trial was had is not in session, so that the application can be made and determined before

the execution, then the application may be made to any justice of the supreme court or special term thereof, within the judicial department where the conviction was had. [AM'D CH. 534 OF 1887.]

People v. Leighton, 1 N. Y. Cr. 468; People v. Bradner, 107 N. Y. 10; People v. Beckwith, 42 Hun, 367; 5 N. Y. Cr. 233; People v. Wentworth, 4 id. 210; People v. Hovey, 93 N. Y. 651; 30 Hun, 354; 1 N. Y. Cr. 324; People v. Palmer, 43 Hun, 409; 5 N. Y. Cr. 109; People v. O'Neil, 47 Hun, 156.

CHAPTER III.

ARREST OF JUDGMENT.

SEC. 467. Motion in arrest of judgment, defined, and upon what defects founded.
468. Court may arrest judgment without motion.
469. Motion, when and how made.
470. Defendant when to be held or discharged.

§ 467. **Motion in arrest of judgment, etc.**—A motion in arrest of judgment is an application, on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant upon the plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment, mentioned in section 331.

Motion in arrest is not confined to indictment, but may include whole record. People v. Bruno, 6 Park. 657. It can not bring up a variance between proof and indictment. People v. Onondaga Gen. Sess. 1 Wend. 296. Nor mistakes of the court on trial, or of the jury in giving verdict. People v. Thompson, 41 N. Y. 1; People v. Allen, 43 ib. 28. Can only be made for defects on the record. Jacobowsky v. People, 6 Hun, 524; 64 N. Y. 659; 2 N. Y. Cr. 15; 20 W. Dig. 294. No arrest except on grounds enumerated. People v. Menken, 36 Hun, 90; 3 N. Y. Cr. 242; People v. Kelly, 94 N. Y. 526; 31 Hun, 226; 2 N. Y. Cr. 18; People v. D'Argencour, 32 Hun, 179; People v. Osterhout, 34 id. 262; 3 N. Y. Cr. 445; People v. Upton, 4 id. 455; 38 Hun, 107; People v. Buddensieck, 103 N. Y. 487; 5 N. Y. Cr. 71; People v. Sullivan, 49 Hun, 333; People v. Beckwith, 42 id. 367; 5 N. Y. Cr. 233; People v. Joyce, 4 id. 348; People v. Davis, 56 N. Y. 95; 45 Barb. 494; Frazer v. People, 54 id. 306; People v. Stein, 1 Park 202; People v. Gilkinson, 4 id. 26; Kane v. People, 3 Wend. 363; People v. Herkimer Co. etc. 20 John. 310; People v. McKay, 8 id. 212; People v. Van Santford, 9 Cow. 655.

§ 468. **Court may arrest judgment without motion.**— The court may also, on its own view of any of these defects, arrest the judgment without motion.

§ 469. **Motion when and how made.**— The motion must be made before or at the time when the defendant is called for judgment. If made before, it must be on notice to the district attorney, or in his presence.

People v. D'Argencour, 95 N. Y. 624; 32 Hun, 179; 2 N. Y. Cr. 267.

§ 470. **Defendant, when to be held or discharged.**— When judgment is arrested, and it appears that there is not evidence sufficient to convict the defendant of any crime, he must, if in custody, be

discharged; or, if under bail, his bail must be exonerated; or, if money has been deposited instead of bail, it must be refunded; and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment was found; but, if there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed or admitted to bail anew to answer the new indictment; if there is reasonable ground to believe him guilty of another crime, he must be committed or held to answer therefor; and in no case, when re-committed or held to answer, is the former verdict a bar to a new indictment.

Cox v. People, 80 N. Y. 500; Dowling v. People, 84 N. Y. 478; see 3 N. Y Cr. 59.

TITLE IX.

Of the Judgment and Execution.

CHAPTER I. The judgment.
II. The execution.

CHAPTER I.

THE JUDGMENT.

SEC. 471, 472. Time for pronouncing judgment, to be appointed by the court.
473. In felony, defendant must be present. In misdemeanor, judgment may be pronounced in his absence.
474. When defendant is in custody, how brought before the court for judgment.
475. How brought before the court, when he is on bail.
476. Bench warrant to issue.
477. Form of bench warrant.
478, 479. Service of the bench warrant.
480. Arraignment of defendant for judgment.
481. What cause may be shown against the judgment.
482. If no sufficient cause shown, judgment to be pronounced.
483. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.
484. Judgment to pay fine.
485. The judgment-roll.

§ 471. Time for pronouncing judgment, to be appointed by the court. — After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested, or a new trial granted, the court must appoint a time for pronouncing judgment.

People v Trimble, 60 Hun. 365; People ex rel. Evans v. McEwen, 2 N. Y. Cr. 313; 67 How. 105; Moett v. People, 85 N. Y. 373; 23 Hun. 60; People v. Harrington, 3 N. Y. Cr. 141; 15 Abb. N. C. 161; 1 How. (N. S.) 37; People v. Graves, 31 Hun. 382; Weed v. People, 56 N. Y. 628; People v. Bork, 96 Id. 198; People v. Morrisette, 20 How. 118; Miller's Case, 9 Cow. 730; Brown v. Rice, 57 Me. 55; 2 Am. Rep. 11; People v. Mueller, 4 Cr. L. Mag. 725.

§ 472. Id.—The time appointed must be at least two days after the verdict, if the court intend to remain in session so long, or if not as remote a time as can reasonably be allowed; but any delay may be waived by the defendant.

People v. Everhardt, 104 N. Y. 592; 2 Sil. (Ct. App.) 506; People v. Bork, 96 N. Y. 188; 2 N. Y. Cr. 179; People v. Trimble, 60 Hun, 366.

§ 473. In felony, defendant, etc.—For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

§ 474. When defendant is in custody, how brought before the court, etc.— When the defendant is in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment; and the officer must do so accordingly.

§ 475. How brought before the court, etc.—If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment, when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

§ 476. Bench warrant to issue.—The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

§ 477. Form of bench warrant.—The bench warrant must be substantially in the following form:

"County of *Albany*, [or as the case may be.]

"In the name of the people of the State of New York—To any sheriff, constable, marshal or policeman in this state.

A. B. having been on the day of , 18 ,

[SEAL.] duly convicted in the *court of sessions of the county of Albany* (or as the case may be), of the crime of [designating it generally.]

"You are therefore commanded, forthwith to arrest the above named A. B., and bring him before that court for judgment; or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of *Albany*, [or as the case

may be, or in the city and county of New York "to the keeper of the city prison of the city of New York."]

"City of *Albany*, [or as the case may be] the day of , 18 .

"By order of the court.

"R. F., clerk."

§ 478. **Service of the bench warrant.**—The bench warrant may be served in any county, in the same manner as a warrant of arrest; except that when served in another county it need not be indorsed by a magistrate of that county.

§ 479. **Id.**—Whether the bench warrant be served in the county in which it was issued, or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

§ 480. **Arraignment of defendant for judgment.**—When the defendant appears for judgment, he must be asked by the clerk whether he have any legal cause to show why judgment should not be pronounced against him.

In capital cases this must appear upon the record. Graham *v.* People, 63 Barb. 468; 6 Lans. 149; see Messner *v.* People, 45 N. Y. 1; Hilderbrand *v.* People, 1 Hun, 19; aff'd 56 N. Y. 394; People *v.* Druse, 103 N. Y. 655; 5 N. Y. Cr. 23; Safford *v.* People, 1 Park. 474; People *v.* McGeery, 6 id. 653; McCue *v.* Com. 78 Penn. St. 185; 21 Am. Rep. 7; State *v.* Jennings, 24 Kan. 659; State *v.* Trezevant, 20 S. C. 353; 47 Am. Rep 840; Jones *v.* State, 51 Miss. 718; 24 Am. Rep. 656; Bressler *v.* State, 117 Ill. 424.

§ 481. **What cause may be shown against the judgment.**—He may show for cause, against the judgment,

1. That he is insane; and if, in the opinion of the court, there be reasonable ground for believing him to be insane, the question of his insanity must be tried as provided by this Code. If, upon the trial of that question, it is found that he is sane, judgment must be pronounced; but if found insane, he must be committed to the state lunatic asylum until he becomes sane; and when notice is given of that fact, he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

People *v.* Osterhout, 34 Hun, 262; People *v.* Menken, 36 id. 90; 3 N. Y. Cr. 446; People *v.* McElvaine, 125 N. Y. 600.

§ 482. **If no sufficient cause shown, judgment, etc.**— If no sufficient cause be alleged, or appear to the court why judgment should not be pronounced, it must thereupon be rendered.

On a plea of guilty, court may give a general judgment applicable to any count. Polinsky *v.* People, 11 Hun, 390; 73 N. Y. 65. Court may suspend judgment. People *v.* Graves, 2 N Y. Cr. 123; People *v.* Morisette, 20 How. Pr. 118. Term. People *v.* Bauer, 37 Hun, 407; People ex rel. Van Houten *v.* Sadler, 97 N. Y. 146; People *v.* Harrington, 15 Abb. N. C. 161; 3 N. Y. Cr. 139. People *v.* Everhardt, 104 N. Y. 591; 2 Sil. (Ct. App.), 506.

§ 483. Court may summarily inquire into circumstances, etc.— After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party, that there are circumstances, which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

People *v.* Bradner, 107 N. Y. 12. People *v.* Vermilyea, 7 Cow. 108.

§ 484. Judgment to pay fine.— The power to remit a fine imposed by any court, whether of record or not of record, imposed for any criminal offense whatever, shall only be exercised as in this section provided. Any court of record, except an inferior court of local jurisdiction, which has imposed a fine for any criminal offense, or the presiding judge thereof, or any judge authorized to preside therein, shall have power in his discretion, on five days' notice to the district attorney of the county in which such fine was imposed, to remit such fine, or any portion thereof. In case of a fine imposed by a court not of record or by any inferior court of local jurisdiction for any criminal offense whatever, the county judge of the county in which the fine was imposed, and in case of a fine imposed by such a court in the city of New York, the court of general sessions, or any judge thereof, upon five days' notice to the district attorney of the county in which such fine was imposed, shall have the same power. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which can not exceed one day for every one dollar of the fine. [AM'D CH. 434 OF 1886.]

See § 718, *post*. Matter of Hoffman, 1 N. Y. Cr. 484; People ex rel. Stokes *v.* Risley, 38 Hun, 281; 4 N. Y. Cr. 110; Matter of Bray, 34 N. Y. St. Rep. 643.

§ 485. The judgment-roll.— [Am'd ch. 520 of 1885.] When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had; and must, upon the service upon him of notice of appeal, immediately annex together and file the following papers, which constitute the judgment-roll:

1. A copy of the minutes of a challenge interposed by the defendant to a grand juror, and the proceedings and decision thereon.

2. The indictment and a copy of the minutes of the plea or demurrer.

3. A copy of the minutes of a challenge which may have been interposed to the panel of the trial jury, or to a juror who participated in the verdict, and the proceedings and decision thereon.

4. A copy of the minutes of the trial.

5. A copy of the minutes of the judgment.

6. A copy of the minutes of any proceedings upon a motion either for a new trial or in arrest of judgment.

7. The bill of exceptions, if there be one.

8. When the judgment is of death, the clerk, in addition to the foregoing, must forthwith cause to be prepared and printed the number of copies of the stenographer's minutes and judgment-roll which are required by the rules of the court of appeals, which shall form the case and exceptions upon which the appeal shall be heard; and three copies shall also be furnished to the defendant's attorney, and three to the district attorney, and one to the governor of the state, and the remainder distributed according to the rules of the court of appeals. The expense of preparing and printing the minutes and judgment-roll shall be a county charge, payable out of the court fund upon the certificate of the county clerk, approved by the county judge of the county in which the conviction was had; but in the city and county of New York such expense shall be payable on the certificate of the clerk of the court in which the conviction was had, approved by the judge presiding at the trial. [AM'D CHS. 493 OF 1887, AND 379 OF 1889.]

Not to contain names or testimony of witnesses. People, etc. v. Nelson, 16 Hun, 214.

Subd. 1. People v. Petmecky, 2 N. Y. Cr. 450; 99 N. Y. 415. No appeal before judgment-roll filed. People v. Havens, 3 N. Y. Cr. 286. People v. Ostrander, 29 Hun, 519; People v. Callahan, id 580; People v Petra, 30 id. 102; People v. Bork, 31 id. 367; People v. Osterhout, 34 id. 262; People v Mangano, 29 id. 263; People v. Joyce, 4 N. Y. Cr. 344, 348; People v Bradner, 107 N Y. 1, 11; People v. O'Neil, 47 Hun, 155; People v. O'Donnell, 46 id. 358; People v. Sharp, 45 id. 504; People v. Beckwith, 42 id. 368; People v. Carlton, 115 N. Y. 618; People v. McQuade, 110 id. 284; 21 Abb. N. C. 448; People v Schad, 58 Hun, 572; People v. Trezza, 128 N. Y. 532; People v. Noonan, 38 N. Y. St. Rep. 857.

CHAPTER II

THE EXECUTION.

SEC. 486. Authority for the execution of a judgment, except of death.
487. Commitment of the defendant.
488. Judgment of imprisonment, by whom and how executed.
489. Duty of sheriff.
490. Same.

§ 486. **Authority for the execution of a judgment, etc.**— When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished

to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

People v. Kelly, 2 N. Y. Cr. 428; People ex rel. Trainor v. Baker, 89 N. Y. 460; People v. Bradner, 107 N. Y. 12; People ex rel. Evans v. McEwen, 2 N. Y. Cr. 307; 67 How. 105; People v. Holmes, 41 Hun, 55.

§ 487. **Commitment of the defendant.** — If the judgment be imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained, until the judgment be complied with.

Imprisonment before sentence does not apply. People v. Warden, etc. 66 N. Y. 345. Misdemeanors. People v. Lincoln, 25 Hun, 306, overruling, People v. McEwen, 62 How. Pr. 226. People v. O'Neil, 47 Hun, 156; People ex rel. Trainor v. Baker, 89 N. Y. 461; Matter of Hoffman, 1 N. Y. Cr. 484.

§ 488. **Judgment of imprisonment, by whom and how executed.** — When the judgment is imprisonment in a county jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county. In all other cases, when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

The judgment, not the *mittimus*, holds prisoner. People ex rel. Trainor v. Baker; 89 N. Y. 460; 2 N. Y. Cr. 307. People v. Lincoln, 25 Hun, 306.

§ 489. **Duty of sheriff.** — If the judgment be imprisonment, except in a county jail, the sheriff must deliver a copy of the entry of the judgment upon the minutes of the court, together with the body of the defendant, to the keeper of the prison, in which the defendant is to be imprisoned.

People v. O'Neil, 47 Hun, 156.

§ 490. **Id.** — The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this state, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county; and every person who refuses or neglects to assist the sheriff, when so required, is punishable, as if the sheriff were in his own county.

TITLE X.

General Provisions in Relation to the Punishment of Crimes.

CHAP. 1. The death penalty.
2. Second offenses, habitual criminals, and special penal discipline.

CHAPTER I.

SEC. 491. Death warrant.
492. Time of execution.
493. Judge must transmit certain papers to governor.
494. Governor may consult judges, etc.
495. Governor only to reprieve, etc.
496. If convict becomes insane, sheriff to impanel jury.
497. Duty of district attorney.
498. Inquisition, etc
499. Sheriff to transmit inquisition to governor, etc.
500 If female convict is pregnant, etc.
501. Inquisition, etc.
502. Sheriff to transmit inquisition to governor, etc.
503. When day of execution is passed, etc.
504. Court to inquire, etc.
505. Death penalty; mode of infliction.
506. Id.; where inflicted.
507. Id.; persons present, etc.
508. Id.; certificate after execution.
509. Id.; disability of warden.

§ 491. Death warrant. — When a defendant is sentenced to the punishment of death, the judge or judges holding the court at which the conviction takes place, or a majority of them, of whom the judge presiding must be one, must make out, sign and deliver to the sheriff of the county, a warrant stating the conviction and sentence, and appointing the week within which sentence must be executed. Said warrant must be directed to the agent and warden of the state prison of this state designated by law as the place of confinement for convicts sentenced to imprisonment in a state prison in the judicial district wherein such conviction has taken place, commanding such agent and warden to do execution of the sentence upon some day within the week thus appointed. Within ten days after the issuing of such warrant the said sheriff must deliver the defendant, together with the warrant, to the agent and warden of the state prison therein named. From the time of said delivery to the said agent and warden, until the infliction of the punishment of death upon him, unless he shall be lawfully discharge from such imprisonment, the defendant shall be kept in solitary confinement at said state prison, and no person shall be allowed access to him without an order of the court, except the officers of the prison, his counsel, his physician, a priest or minister of religion, if he shall desire one, and the members of his family. [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10, 11 AND 12, ID. FOLLOWING § 509 POST.]

People ex rel. Trezza v. Brush, 60 Hun, 401; People ex rel. Kemmler v. Durston, 119 N. Y. 575; People v. Nolan, 115 N. Y., 660; 2 Sil. (Ct. App.) 396.

§ 492. Time of execution. — The week so appointed must begin not less than four weeks and not more than eight weeks after the sentence. The time of the execution within said week shall be left to the discretion of the agent and warden to whom the warrant is directed; but no previous announcement of the day or hour of the execution shall be made, except to the persons who shall be invited or permitted to be present at said execution as hereinafter provided. [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10, 11 AND 12, ID. FOLLOWING § 509 POST.]

People ex rel. Kemmler *v.* Durston, 119 N. Y. 575; Thomas *v.* People, 67 d., 218; Haggerty *v.* People, 53 id., 476; Matter of Ferris, 35 id., 262; 32 How. 411.

§ 493. Judge must transmit certain papers to governor. — The judge, presiding at the term at which the conviction took place, must immediately thereupon transmit to the governor a statement of the conviction and sentence, with the notes of testimony taken upon the trial by him, or the notes, written out, taken by a stenographer or assistant stenographer, attending the court or term pursuant to law.

§ 494. Governor may consult judges, etc. — The governor is authorized to require the opinion of the judges of the court of appeals, justices of the supreme court, and the attorney-general, or of any of them, upon a statement so furnished.

§ 495. Governor only to reprieve, except, etc. — No judge, court, or officer, other than the governor, can reprieve or suspend the execution of a defendant sentenced to the punishment of death, except where a sheriff is authorized so to do, in a case and in the manner prescribed in the following sections of this chapter. This section does not apply to a stay of proceedings upon an appeal or writ of error.

§ 496. If convict becomes insane, etc. — If, after a defendant has been sentenced to the punishment of death, there is reasonable ground to believe that he has become insane, the sheriff of the county in which the conviction took place, with the concurrence of a justice of the supreme court, or the county judge of the county, who may make an order to that effect, must impanel a jury of twelve persons of that county, qualified to serve as jurors in a court of record, to examine the question of the sanity of the defendant. The sheriff must give at least seven days' notice of the time and place of the meeting of the jury to the district-attorney of the county. Section 108 of the Code of Civil Procedure regulates the impaneling of such a jury, and the proceedings upon the inquisition so far as it is applicable.

§ 497. Duty of district attorney.—The district attorney must attend the inquiry. He may produce witnesses before the jury; for which purpose he has the same power to issue subpœnas, as for witnesses to attend a grand jury, and disobedience thereto may be punished by the court of oyer and terminer for that county, at any term thereof, in the same manner as disobedience to process issued by that court.

§ 498. Inquisition; suspension of execution.—The inquisition of the jury must be signed by the jurors and the sheriff. If it be found by the inquisition that the defendant is insane, the sheriff must suspend execution of the warrant directing the defendant's death, until he receives a warrant from the governor, directing that the defendant be executed.

§ 499. Sheriff to transmit inquisition to governor; governor's duty. — The sheriff must immediately transmit the inquisition to the governor; who, as soon as he is satisfied of the sanity of the defendant, or of his restoration to sanity, must issue his warrant, appointing a time and place for the execution of the latter, pursuant to his sentence, unless the sentence is commuted or the convict pardoned, and may in the meantime give directions for the disposition and custody of the defendant.

§ 500. If female convict is pregnant, etc. — If there is reasonable ground to believe that a female defendant, sentenced to the punishment of death, is pregnant, the sheriff of the county where the conviction took place must impanel a jury of six physicians to inquire into her pregnancy. Sections 497 and 498 of this Code apply to the proceedings upon the inquisition, except that the sheriff may, in his discretion, require one or more of the physicians composing the jury to attend from an adjoining county. A physician, acting as a juror upon such an inquisition, need not be qualified to serve as a juror in a court of record.

§ 501. Inquisition, etc. — The inquisition of the jury must be signed by the jurors and the sheriff. If it is found by the inquisition that the defendant is quick with child, the sheriff must suspend the execution of the warrant directing her execution, until he receives a warrant from the governor, directing that the convict be executed.

§ 502. Sheriff to transmit inquisition to governor; governor's duty. — The sheriff must immediately transmit the inquisition to

the governor, who, as soon as he is satisfied that the defendant is no longer quick with child, may issue his warrant, appointing a time and place for her execution, pursuant to her sentence, or may commute her puishment to imprisonment for life.

§ 503. **When day of execution passed, etc.** — Whenever, for any reason other than insanity or pregnancy, a defendant sentenced to the punishment of death has not been executed pursuant to the sentence, at the time specified thereby, and the sentence or judgment inflicting the punishment stands in full force, the court of appeals or a judge thereof or the supreme court or a justice thereof, upon application by the attorney-general or of the district attorney of the county where the conviction was had, must make an order directed to the *agent and warden or other officer in whose custody said defendant may be*, commanding him to bring the convict before the court of appeals or a general term of the supreme court in the department, or a term of the court of oyer and terminer in the county where the conviction was had. If the defendant be at large, a warrant may be issued by the court of appeals or a judge thereof, or by the supreme court or a justice thereof, directing any sheriff or other officer to bring the defendant before the court of appeals or the supreme court at a general term thereof, or before a term of the court of oyer and terminer in that county. [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10, 11 AND 12, ID. FOLLOWING § 509 POST.]

People ex rel. Kemmler v. Durston, 119 N. Y. 575; People v. Riley, 15 W. Dig. 294.

§ 504. **Court to inquire, etc.** — Upon the defendant being brought before the court, it must inquire into the circumstances, and if no legal reason exists against the execution of the sentence, it must issue its warrant to the *agent and warden of the state prison mentioned in the original warrant and sentence*, under the hands of the judge or judges, or a majority of them, of whom the judge presiding must be one, commanding the said *agent and warden* to do execution of the sentence *during the week* appointed therein. The warrant must be obeyed by the *agent and warden accordingly. The time of the execution within said week shall be left to the discretion of the agent and warden, to whom the warrant is directed; but no previous announcement of the day or hour of the execution shall be made, except to the persons who shall be invited or permitted to be present at said execution as hereinafter provided.* [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10, 11 AND 12, ID. FOLLOWING § 509 POST]

People ex rel. Kemmler v. Durston, 119 N. Y. 575; People v. Lyons, 6 N. Y. Cr. 133; Matter of Ferris, 35 N. Y. 262; 32 How. 411.

§ 505. **Death penalty; mode of infliction.** — The punishment of death must in every case, be inflicted by *causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current must be continued* until such convict is dead. [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10, 11 and 12, ID. FOLLOWING § 509 POST.]

People ex rel. Kemmler v. Durston, 55 Hun, 65; 119 N. Y. 575; People v. Kemmler, id. 580.

§ 506. **Id.; where inflicted.** — The punishment of death must be inflicted within the walls of the *state prison designation in the warrant*, or within the yard or inclosure adjourning thereto. [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10, 11 and 12, ID. FOLLOWING § 509 POST.]

People ex rel. Kemmler v. Durston, 119 N. Y. 575.

§ 507. **Persons present, etc.**— It is the duty of the agent and warden to be present at the execution, and to invite the presence, by at least three days previous notice, of a justice of the supreme court, the district attorney, and the sheriff of the county where the conviction was had, together with two physicians and twelve reputable citizens of full age, to be selected by said agent and warden. Such agent and warden must at the request of the criminal, permit such ministers of the gospel, priests or clergymen of any religious denomination, not exceeding two, to be present at the execution; and in addition to the persons designated above, he shall also appoint seven assistants or deputy sheriffs who shall attend the execution. He shall permit no other person to be present at such execution except those designated in this section. Immediately after the execution a post-mortem examination of the body of the convict shall be made by the physicians present at the execution, and their report in writing stating the nature of the examination, so made by them, shall be annexed to the certificate hereinafter mentioned and filed therewith. After such post-mortem examination, the body, unless claimed by some relative or relatives of the person so executed, shall be interred in the grave-yard or cemetery attached to the prison, with a sufficient quantity of quick-lime to consume such body without delay; and no religious or other services shall be held over the remains after such execution, except within the walls of the prison where said execution took place, and only in the presence of the officers of said prison, the person conducting said services, and the immediate family and relatives of said deceased prisoner. Any person who shall violate or omit to comply with any provision of this section shall be guilty of a misdemeanor. [AM'D, CH. 16 OF 1892. IN EFFECT IMMEDIATELY.]

People ex rel. Kemmler v. Durston, 119 N. Y. 575

§ 508. **Id.; certificate of execution.**—The *agent and warden* attending the execution must prepare and sign a certificate, setting forth the time and place thereof, and that the convict was then and there executed, in conformity to the sentence of the court and the provisions of this Code, *and must procure such certificate to be signed by all the persons present and witnessing the execution.* He must cause the certificate, *together with the certificate of the post-mortem examination mentioned in the preceding section, and annexed thereto,* to be filed *within ten days after the execution,* in the office of the clerk of the county *in which the conviction was had.* [IN EFFECT JAN. 1, 1889. A'MD CH. 489 OF 1888. SEE §§ 10, 11 AND 12, ID. FOLLOWING § 509 POST.]

People ex rel. Kemmler v. Durston, 119 N. Y. 575.

§ 509. **Id; disability of warden.**—*In case of the disability, from illness or other sufficient cause, of the agent and warden to whom the death warrant is directed, to be present and execute said warrant, it shall be the duty of the principal keeper of said prison, or such officer of said prison as may be designated by the superintendent of state prisons, to execute the said warrant, and to perform all the other duties by this act imposed upon said agent and warden.* [IN EFFECT JAN. 1, 1889. AM'D CH. 489 OF 1888. SEE §§ 10 AND 12, ID. FOLLOWING.]

People ex rel. Kemmler v. Durston, 119 N. Y. 575.

[§ 10. *Nothing contained in any provision of this act applies to a crime committed at any time before the day when this act takes effect. Such crime must be punished according to the provisions of law existing when it is committed, in the same manner as if this act had not been passed; and the provisions of law for the infliction of the penalty of death upon convicted criminals, in existence on the day prior to the passage of this act, are continued in existence and applicable to all crimes punishable by death, which have been or may be committed before the time when this act takes effect. A crime punishable by death committed after the beginning of the day when this act takes effect, must be punished according to the provisions of this act, and not otherwise.* [§ 10, CH. 489 OF 1888.]

§ 11. *All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.* [§ 11, CH. 489 OF 1888.]

§ 12. *This act shall take effect on the first day of January one thousand eight hundred and eighty-nine, and shall apply to all convictions for crimes punishable by death, committed on or after that date.* [§ 12, CH. 489 OF 1888.]]

People v. Nolan, 2 Sil. (Ct. App.), 398.

CHAPTER II.

SECOND OFFENSES, HABITUAL CRIMINALS AND SPECIAL PENAL DISCIPLINE.

SEC. 510. When convict may be adjudged an habitual criminal.
511. Judgment accordingly, etc.
512. Persons so adjudged when liable to arrest and punishment.
513. Id.; evidence of character, etc.
514. Id.; always liable to search, etc.

§ 510. When convict may be adjudged an habitual criminal.—When a person is hereafter convicted of a felony, who has been before that conviction, convicted in this state of any other crime, he may be adjudged by the court in addition to other punishment inflicted upon him, to be an habitual criminal. A person convicted of a misdemeanor, who has been already five times convicted in this state of a misdemeanor, may be adjudged by the court in addition to, or instead of, other punishment, to be an habitual criminal.

See §§ 690-692 of Penal Code; see People *v.* McCarthy, 45 How. Pr. 97.

§ 511. Judgment accordingly, how entered, etc.—The judgment specified in the last section must be entered in a separate book kept for that purpose. A copy of the entry, duly certified by the clerk of the court is proof of the judgment, and a copy so certified, must be forthwith transmitted to the police department of each city, and to the district attorney of each county in the state.

§ 512. Persons so adjudged when liable to arrest and punishment.—A person who has been adjudged an habitual criminal is liable to arrest summarily with or without warrant, and to punishment as a disorderly person, when he is found without being able to account therefor, to the satisfaction of the court or magistrate, either.

1. In possession of any deadly or dangerous weapon, or of any tool, instrument or material, adapted to, or used by criminals for, the commission of crime, or

2. In any place or situation, under circumstances giving reasonable ground to believe that he is intending or waiting the opportunity to commit some crime.

See subd 9, § 899, *post*. Not entitled to jury trial. People *v.* McCarthy, 45 How. Pr. 97.

§ 513. Id.; evidence of character on subsequent trial.—A person who, having been adjudged an habitual criminal, is charged with a crime, committed thereafter, may be described in the complaint, warrant or indictment therefor, as an habitual criminal; and, upon proof that he has been adjudged to be such, the prosecution

may introduce, upon the trial or examination, evidence as to his previous character, in the same manner and to the same extent as if he himself had first given evidence of his character and put the same in issue.

§ 514. Id.; always liable to search, etc.—The person and the premises of every one who has been convicted and adjudged an habitual criminal shall be liable at all times to search and examination by any magistrate, sheriff, constable, or other officer, with or without warrant.

Is forcible examination of person constitutional. *Quære.* See People *v.* McCoy, 45 How. Pr. 216.

TITLE XI.

Of Appeals.

CHAPTER I. Appeals, when allowed, and how taken.
II. Dismissing an appeal, for irregularity.
III. Argument of the appeal.
IV. Judgment upon appeal.

CHAPTER I.

APPEALS, WHEN ALLOWED, AND HOW TAKEN.

SEC. 515. Writs of error and of certiorari abolished, etc.
516. Parties, how designated on appeal.
517. In what cases appeal may be taken by defendant.
518. In what cases, by the people.
519. Appeal to the court of appeals.
520. Appeal, a matter of right.
521. Time of appeal.
522-525 Appeal how taken.
526. Appeal by the people, not to stay or effect the judgment until reversed.
527. Stay of proceedings, on appeal to supreme court from judgment of conviction.
528. Stay, upon appeal to court of appeals from judgment of supreme court affirming judgment of conviction.
529. Certificate of stay not to be granted, but on notice to district attorney.
530. Effect of the stay.
531. Same.
532. Transmitting the papers to the appellate court.

§ 515. Writs of error and certiorari abolished; appeal substituted.—Writs of error and of certiorari in criminal actions *and proceedings and special proceedings of a criminal nature,* as they have heretofore existed, are abolished; and hereafter the only mode of reviewing a judgment or order in a criminal action *or proceeding, or special proceeding of a criminal nature,* is by appeal. [AM'D CH. 372 OF 1884].

People *v.* Burleigh, 1 N. Y. Cr. 447, decided before am'd't of 1884. Conviction after upon indictment before Code, reviewed by appeal. 1 N. Y. Cr. 456. Void judgment can be questioned on *habeas corpus.* People ex rel. Stokes *v.*

Risley, 38 Hun, 280. Killoran v. Barton, 26 Hun, 650; People ex rel. Fuller v. Carney, 29 id. 48; 1 N. Y. Cr. 270; People v. Dempsey, 31 Hun, 527; 56 How. 378; 66 id. 378; People ex rel. Devoe v. Kelly, 33 Hun, 538; 2 N. Y. Cr. 430; People ex rel. Scherer v. Walsh, 33 Hun, 346; 2 N. Y. Cr. 326; 67 How. 484; People v. Havens, 3 N. Y. Cr. 287; 21 W. Dig. 361; People v. Palmer, 109 N. Y. 419; McKeon v. People, 1 N. Y. Cr. 456; 15 W. Dig. 347; People ex rel. Wright v. Court, etc. 45 Hun, 55; People v. Vitan, 20 Abb. N. C. 298; Tillotson v. Smith, 12 N. Y. St. Rep. 331; People ex rel. Gunter v. Murray, 62 Hun, 30; People v. Bork, 31 id. 371.

§ 516. Parties, how designated on appeal.—The party appealing is known as the appellant, and the adverse party as the respondent. But the title of the action is not changed, in consequence of the appeal.

§ 517. In what case appeal may be taken by defendant.—An appeal to the supreme court may be taken by the defendant from the judgment on a conviction after indictment, *except that when the judgment is of death the appeal must be taken direct to the court of appeals*, and, upon the appeal, any actual decision of the court in an intermediate order or proceeding forming a part of the judgment-roll, as prescribed by section four hundred and eighty-five, may be reviewed. [AM'D CH. 493 OF 1887. See § 2 ID. SUP. § 485.]

Supreme Court has no jurisdiction on appeal except as given by statutes. Shufflin v. People, 4 Hun, 16. Appeal in criminal contempt. People v. Dwyer, 90 N. Y. 402; s. c. 27 Hun, 548; People v. Gilmore, 88 N. Y. 626. Order denying motion in arrest of judgment appealable. People v. Bork, 1 N. Y. Cr. 393. People v. Mangano, 29 Hun, 263; Ostrander v. People, id. 510, 519; People v. Callahan, id. 580; 17 W. Dig. 192; People v. Petrea, 30 Hun, 98, 102; People v. Hovey, id. 351, 357; People v. Osterhout, 34 id. 262; 3 N. Y. Cr. 446; People v. Petmecky, 2 id. 458; People v. Havens, 3 id. 287; People v. Lyons, 17 N. Y. St. Rep 769; People v. Palmer, 109 N. Y. 419; People v. Beckwith, 42 Hun, 368; 5 N. Y. Cr. 234; People v. McQuade, 110 N. Y. 284; 21 Abb. N. C. 418; People v. Schad, 58 Hun, 572; People v. Noonan, 38 N. Y. St. Rep. 857; People v. Trezza, 40 id. 482; 125 N. Y. 532.

§ 518. In what cases by the people. — An appeal to the supreme court may be taken by the people in the following cases and no other:

1. Upon a judgment for the defendant, on a demurrer to the indictment.

2. Upon an order of the court, arresting the judgment.

A new trial can not be granted, when defendant has been acquitted of a felony. People v. Comstock, 8 Wend. 549. See People v. Corning, 2 N. Y. 9; People v. Dempsey, 2 N. Y. Cr. 117; 31 Hun, 526; People v. Callahan, 29 id. 561; People v. Beckwith, 42 id. 367; 5 N. Y. Cr. 234; People v. Snyder, 44 Hun, 193.

§ 519. Appeal to the court of appeals. — An appeal may be taken from a judgment or order of the supreme court to the court of appeals in the following cases and no other:

1. From a judgment affirming or reversing a judgment of conviction;

2. From a judgment affirming or reversing a judgment for the defendant on a demurrer to the indictment, or from an order affirming, vacating, or reversing an order of the court arresting judgment;

3. From a final determination affecting a substantial right of the defendant.

Are preferred causes. Rule 11, Ct. App., and first in order. Rule 20, id. What brought upon appeal by the people. 16 W. Dig. 521; 17 id. 127. When order reversing conviction appealable. People v. Poucher, 99 N. Y. 610. See People v. Conroy, 97 N. Y. 62; People ex rel. Breslin v. Lawrence, 107 N. Y. 607; Moett v. Heople, 26 Hun, 394; 14 W. Dig. 125; People v. Poucher, 21 id. 410; People v. Mangano, 29 Hun, 259.

§ 520. **Appeal, a matter of right.**—All appeals, provided for in this chapter, may be taken as a matter of right.

People v. Palmer, 109 N. Y. 419.

§ 521. **Time for appeal.**—An appeal must be taken within one year after the judgment was rendered or the order entered. [AM'D CHAP. 189 OF 1892. IN EFFECT IMMEDIATELY.]

§ 522. **Appeal, how taken.**—An appeal must be taken, by the service of a notice in writing on the clerk with whom the judgment-roll is filed, stating that the appellant appeals from the judgment.

§ 523. **Id.**—If the appeal be taken by the defendant a similar notice must be served on the district attorney of the county in which the original judgment was rendered.

§ 524. **Id.**—If it be taken by the people, a similar notice must be served on the defendant, if he be a resident of, or imprisoned in the city or county; or if not, on the counsel, if any, who appeared for him on the trial, if he reside or transact his business in the county. If the service can not, after due diligence, be made, the appellate court, upon proof thereof, may make an order for the publication of the notice, in such newspaper, and for such time as it deems proper.

People v. Snyder, 44 Hun, 193.

§ 525. **Id.**—At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal becomes perfected.

Court may order case printed for assigned counsel. People v. Willett, 1 How. Pr. (U. S.) 196.

§ 526. **Appeal by the people, etc.**—An appeal taken by the people, in no case stays or affects the operation of a judgment in favor of the defendant, until the judgment is reversed.

People v. Snyder, 44 Hun, 193.

§ 527. Stay of proceedings on appeal, etc.—An appeal to the supreme court from a judgment of conviction, or other determination from which an appeal can be taken, stays the execution of the judgment or determination upon filing, with the notice of appeal, a certificate of the judge who presided at the trial, or of a *justice* of the supreme court, that, in his opinion, there is reasonable doubt whether the judgment should stand, but not otherwise. And the appellate court may order a new trial if it be satisfied that the verdict against the prisoner was against the weight of evidence or against law, or that justice requires a new trial, whether any exception shall have been taken or not in the court below. [AM'D CH. 493 OF 1887. See § 2 ID. SUP. § 485.]

Under what circumstances stay should be granted. Sullivan *v.* People, 1 Park. 347; People *v.* Hendrickson, id. 396; People *v.* Lohman, 2 Barb. 450; People *v.* Folmsbee, 60 id. 480; People *v.* O'Reilly, 61 How. Pr. 8, 15. No exception. People *v.* Williams, 29 Hun, 520; People *v.* Mangano, id. 259. Appeal to court of appeals when not covered by. 17 W. Dig. 127; see People *v.* Murphy, 3 N. Y. Cr. 338 People *v* Jones, 34 Hun, 620; aff'd 99 N. Y. 667; People *v.* Wenthworth, 3. N. Y. Cr. 111; People *v* Guidici, 100 N. Y. 503; People *v.* Donovan, 23 Weekly Dig. 9. People *v.* Osterhout, 34 Hun, 262; 3 N. Y. Cr. 446; People *v.* Reavey, 38 Hun, 426; 4 N. Y. Cr. 19; People *v.* Sweeney, 41 Hun, 343; 4 N. Y. Cr. 275; People *v.* McGloin, 91 N. Y. 241; 12 Abb. N. C. 172; 1 N. Y. Cr. 160; People *v.* Bork, id. 393; People *v* D'Argencour, 95 N. Y. 624; 2 N. Y. Cr 277; People *v.* Willett, 1 How. (N S.) 196; 3 N. Y. Cr. 56; People *v.* McInerney, 5 id. 47, People *v.* Zimmerman, id. 274; People *v.* Upton, id. 455; People *v.* Ketmecky, 3 id. 288; People *v.* Majone, 91 N. Y. 211; 12 Abb. N. C. 187; People *v.* Hovey, 92 N. Y. 554; People *v.* Boas, id. 260; People *v.* Druse, 103 id 655, 5 N. Y. Cr. 10; People *v.* Johnson, 104 N. Y. 213; People *v.* Driscoll, 107 id. 417; People *v.* Cignarale, 110 id. 23; People *v.* Beckwith, 108 id. 76; People *v.* Newton, 35 Hun, 666; 3 N. Y. Cr. 402; People *v.* Sullivan, 4 id. 198; People *v.* Joyce, id. 345; People *v.* Meyers, 5 id. 124; People *v* Shepherd, 44 Hun, 566; 5 N. Y. Cr 124; Moett *v.* People, 14 W. Dig. 125; Horace *v.* People, 21 id. 111; People *v.* Thornton, 46 Hun, 645; People *v.* Wileman, 44 id. 186; People *v.* Donovan, 101 N. Y 632; 4 N. Y. Cr. 87; 3 How. (N. S.) 356 People *v.* Greenwall, 115 N. Y. 520; People *v.* Stone, 117 id. 483; People *v.* Kelly, 118 id. 617; 2 Sil. (Ct. App.) 232; People *v.* Emerson, 6 N. Y. Cr. 157; People *v.* Webster, 59 Hun, 402; People *v.* Izzo, 39 N. Y. St. Rep. 166; People *v.* Trezza, 125 N. Y. 740; People *v.* Stevens, 1 Sil. (Ct. App.) 329; People *v.* Kurtz, 6 N. Y. St. Rep. 394.

§ 528. Stay, upon appeal to the court of appeals, etc.— An appeal to the court of appeals, from a judgment of the supreme court, affirming a judgment of conviction, stays the execution of the judgment appealed from, upon filing, with the notice of appeal, a certificate of a judge of the court of appeals or of the supreme court, that in his opinion there is reasonable doubt whether the judgment should stand, but not otherwise. When the judgment is of death, an appeal to the court of appeals stays the execution of course until the determination of the appeal. *When the judgment is of death, the court of appeals may order a new trial, if it be satisfied that the verdict was against the weight of evidence or against law, or that justice requires a new trial, whether any exception shall have been taken or not, in the court below.* [AM'D CH. 493 OF 1887. See § 2 ID. SUP. § 485.]

People v. Hovey, 92 N. Y. 554; People v. Bragle, 88 id. 585; 63 How. 143; 26 Hun, 378; 10 Abb. N. C. 300; People v. Driscoll, 107 N. Y. 414; People v. Van Brunt, 108 id. 656; 1 Sil. (Ct. App.) 587; People v. Willson, 109 id. 349; People v. Lyons, 110 id. 618; 2 Sil. (Ct. App.) 60; People v. Willet, 3 N. Y. Cr. 50; Moett v. People, 14 W. Dig. 125; O'Brien v. People, 36 N. Y. 276; People v. Kelly, 113 id. 648; 2 Sil. (Ct. App.) 232; People v. Beckwith, 108 N. Y. 369; People v. Greenwall, 115 id. 520; People v. Fish, 125 id. 144; People v. Stone, 117 id. 480; People ex rel. Trezza v. Bush, 60 Hun, 400, 402; People v. Trezza, 128 N. Y. 529, 536.

§ 529. **Certificate of stay not to be granted, etc.**—The certificate mentioned in the last two sections can not, however, be granted upon an appeal on a conviction of felony, until such notice as the judge may prescribe, has been given to the district attorney of the county where the conviction was had, of the application for the certificate. But the judge may stay the execution of the judgment, in the meantime.

People v. Petmecky, 2 N. Y. Cr. 453; People v. Cooper, 3 id. 317; People v. Wentworth, id. 117; People v. Sweeny, 41 Hun, 343; 4 N. Y. Cr. 286; People v. Dimick, 107 N. Y. 13.

§ 530. **Effect of the stay.**—If the certificate, provided in sections 527 and 528, be given, the sheriff must, if the defendant be in his custody, upon being served with a copy of the order, keep the defendant in his custody, without executing the judgment, and detain him to abide the judgment upon the appeal.

People v. McTameney, 30 Hun, 506; 1 N. Y. Cr. 437; 13 Abb. N. C. 55; 66 How. 70; 17 W. Dig. 492; People ex rel. Reavey v. Walsh, 8 N. Y. St. Rep. 895.

§ 531. **Id.**—If, before the granting of the certificate, the execution of the judgment have commenced, the further execution thereof is suspended, and the defendant must be restored by the officer in whose custody he is, to his original custody.

People v. McTameney, 30 Hun, 506; 1 N. Y. Cr. 437; 13 Abb. N. C. 55; 66 How. 70; 17 W. Dig. 492; People ex rel. Reavey v. Walsh, 8 N. Y. St. Rep. 895.

§ 532. **Transmitting the papers to the appellate court.**—Upon the appeal being taken, the clerk, with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit a copy of the notice of appeal and of the judgment-roll, as follows:

1. If the appeal be to the supreme court, to the clerk of that court, where the next general term in the district is to be held.

2. If it be to the court of appeals, to the clerk of that court.

Application to amend return should be made to court where judgment was rendered. Rew v. Barker, 2 Cow. 408. On order of appellate court. Rule 3, Ct. App. People v. McTameney, 30 Hun, 506; 1 N. Y. Cr. 437; 1. Abb. N. C. 55; 66 How. 70; 17 W. Dig. 492; People ex rel. Reaver v. Walsh, 8 N. Y. St. Rep. 895.

CHAPTER II.

DISMISSING AN APPEAL, FOR IRREGULARITY.

SEC. 533. For what irregularity, and how, dismissed.
534. Dismissal for want of return.

§ 533. **For what irregularity, and how, dismissed.** — If the appeal be irregular in a substantial particular, but not otherwise, the court may, on any day in term, on motion of the respondent, upon five days' notice, served with copies of the papers on which the motion is founded, order it to be dismissed.

§ 534. **Dismissal for want of return.** — The court may also, upon like motion, dismiss the appeal, if the return be not made, as provided in section 532, unless, for good cause, they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

SEC. 535. Appeal to supreme court, how and where brought to argument.
536. Appeal to court of appeals, how brought to argument.
537. Notice of argument to counsel for defendant.
538. Papers, by whom furnished, and effect of omission.
539. Judgment of affirmance may be without argument, if appellant fail to appear. Reversal, only upon argument, though respondent fail to appear.
540. Number of counsel to be heard. Defendant's counsel to close the argument.
541. Defendant need not be present.

§ 535. **Appeal to supreme court, how and where brought to argument.** — An appeal to the supreme court may be brought to argument by either party, on ten days' notice, on any day, at a general term, held in the *department* in which the original judgment was given. [AM'D CH. 384 OF 1884].

Appeals and other proceedings in a criminal cause are entitled to preference. Code of Civil Proc., § 790. May be heard on any day in term. Sup. Ct. rule 43. See Barton *v.* People, 1 Barb. 136.

§ 536. **Appeal to court of appeals, etc.** — An appeal to the court of appeals may, in the same manner, be brought to argument by either party, on any day in term.

§ 537. **Notice of argument, etc.**—If a counsel, within five days after the appeal, have given notice to the district attorney, that he appears for the defendant, notice of argument must be served on him, instead of the defendant; otherwise, notice must be served as the court may direct.

§ 538. **Papers, by whom furnished, etc.**—When the appeal is called for argument, the appellant must furnish the court with copies of the notice of appeal and judgment-roll, *except where the judgment is of death*. If he fail so to do, the apeeal must be dismissed, unless the court otherwise direct. [AM'D CH. 493 OF 1887. See § 2 ID. SUP. § 485.]

See Rule 41, Sup. Ct.

§ 539. **Judgment of affirmance may be without argument, etc.**—Judgment of affirmance may be given, without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear.

See Rule 15, Ct. App.; Barron *v.* People, 1 Barb. 136; People *v.* Bradner, 44 Hun, 235; 107 N. Y. 1.

§ 540. **Number of counsel, etc. Defendant's counsel to close, etc.**—Upon the argument of the appeal, if the crime be punishable with death, two counsel on each side must be heard if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side. The counsel for the defendant is entitled to the closing argument.

§ 541. **Defendant need not be present.**—The defendant need not personally appear in the appellate court.

See Matter of O'Byrne, 55 Hun, 438; People *v.* Genet, 59 N. Y. 80.

CHAPTER IV.

JUDGMENT, UPON APPEAL.

SEC. 542. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.
543. May reverse, affirm or modify the judgment, and order a new trial.
544. New trial.
545. Defendant to be discharged on reversal of judgment against him, where new trial is not ordered.
546. Judgment to be executed, on affirmance against the defendant.
547. Judgment of appellate court, how entered and remitted.
548. Papers returned not to be remitted
549. Jurisdiction of appellate court ceases, after judgment remitted.

§ 542. **Court to give judgment, etc., not affecting substantial rights.**—After hearing the appeal the court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties.

See § 285, *ante*; 648, *post*. Illegal evidence which may have prejudiced the prisoner is ground for new trial. Lambert *v.* People, 6 Abb. N. C. 181. See Cox *v.* People, 80 N. Y. 500. Must be exception to bring up questions for review. Brotherton *v.* People, 75 N. Y. 159. See Lattimer *v.* Hill, 8 Hun, 171; Clute *v.* Emmerick, 12 Ib. 504; Moett *v.* People, 85 N. Y 373; Irving *v.* People, 2 N. Y. Cr. 50. Formal defects. Schumpf *v.* People, 14 Hun, 10; People *v.* Burns, 2 N. Y. Cr. 427; People *v.* Conroy, Ib. 565; People *v.* Riley, 3 Ib. 297.

People v. Chacon, 102 N. Y. 669; 1 Sil. (Ct. App.) 41; 4 N. Y. Cr. 173; People Buddensieck, 103 N. Y. 487; People v. Courtney, 1 N. Y. Cr. 557; People v. Martin, 2 id. 51; People v. Bork, 31 Hun, 360; 2 N. Y. Cr. 67; People v. Burns, 33 Hun, 300; 2 N. Y. Cr. 427; People v. Riley, 3 id 374; People v. Clipperly, id. 385; People v. Bowles, id. 433; People v. Osterhout, 107 N. Y. 427; 34 Hun, 260; 3 N. Y. Cr. 445; 20 W. Dig. 294; People v. Otto, 4 N. Y. Cr. 149; People v. Upton, 38 Hun, 107; Willett v. People, 27 id. 471; People v. Kelly, 31 id. 228; People v. Irving, 95 N. Y. 141; 31 Hun. 614; 2 N Y. 47; People v. Sharp, 45 Hun, 460, 499; People v. Wileman, 44 Hun, 187; People v. Richards, 44 id. 278; 5 N. Y. Cr. 371; People v. Bradner, 107 N. Y. 1; People v. Meyers, 5 N. Y. Cr. 120; People v. Dimick, 107 N. Y. 13; People v. Palmer, 109 id. 413: People v. McQuade, 110 id. 284; 21 Abb. N. C. 419, 433, 435, 436, 449; Eggler v. People, 56 N. Y. 642; People v. Wentworth, 4 N. Y. Cr. 214; People v. Druse, 5 id. 33; People v. Johnson, 104 N. Y. 213; 5 N. Y. Cr. 221; People v. Connor, 53 Hun, 356; People v. Menken, 36 id. 91; 3 N. Y. Cr. 233, People v. Sweeney, 36 N Y. St. Rep. 77; People v. Wood, 126 N. Y. 265; People v. Hagan, 37 N. Y. St. Rep. 661; People v. Wagman, 128 N. Y. 588, People v. Brooks, 39 N. Y. St. Rep. 832.

§ 543. **May reverse, affirm or modify, etc.**— Upon hearing the appeal the appellate court may, in cases where an erroneous judgment has been entered upon a lawful verdict, correct the judgment to conform to the verdict; in all other cases they must either reverse or affirm the judgment appealed from, and in cases of reversal, may, if necessary or proper, order a new trial.

When new trial should not be ordered. Foot v. Ætna L. Ins. Co. 61 N. Y. 571; Sawyer v. People, 27 Hun, 236. Can not entertain original motion. Ostrander v. People, 28 Hun, 38. See People v. Hovey, 30 ib. 354. People v. Palmer, 109 N. Y. 419; 5 N. Y. Cr. 108; 43 Hun, 408; People v. Bradner, 107 N. Y. 12; People v. Griffin, 27 Hun, 595; 15 W. D. 294; People ex rel. Devoe v. Kelly, 2 N. Y. Cr. 430; 52 Hun, 538; 97 N. Y. 212; People v. Bork, 2 N. Y. Cr. 177; People v. Bauer, 3 id. 434; People ex rel. Stokes v. Riseley, 38 Hun, 282; 4 N. Y. Cr. 109.

§ 544. **New trial.**— When a new trial is ordered, it shall proceed in all respects as if no trial had been had.

See § 462 *post*. People v. Palmer, 109 N. Y. 413, 419; 43 Hun, 409; 5 N. Y. Cr. 109; People v. Cignarale, 110 N. Y. 33; People v. Webster, 59 Hun, 402.

§ 545. **Defendant to be discharged on reversal against him, where new trial is not ordered.**— If a judgment against the defendant be reversed, without ordering a new trial, the appellate court must direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

People v. Johnson, 4 N. Y Cr. 596.

§ 546. **Judgment to be executed, on affirmance against the defendant.**— On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct, and if the defendant be at large, a bench warrant may be issued for his arrest. If a judgment be corrected, the corrected judgment must be carried into execution as the appellate court may direct.

Re-sentence in capital case. Moett v People, 85 N. Y. 373.

§ 547. Judgment of appellate court, how entered and remitted. — When the judgment of the appellate court is given, it must be entered in the judgment book, and a certified copy of the entry forthwith remitted to the clerk with whom the original judgment-roll is filed, or, if a new trial be ordered in another county, to the clerk of that county, unless the judgment be rendered in the absence of the adverse party, in which case, the court may direct it to be retained, not exceeding ten days.

See rule 15, Ct. App. People v. Morehouse, 2 Sil. (S. C.), 245; People v. Harris, 28 N Y. St. Rep. 301; People v. Upton, 29 id. 779; People v. Sweeney, 36 id. 77, People v. Crotty, 30 id. 46.

§ 548. Papers returned, not to be remitted.— *The decision of the court and the return shall be remitted to the court below in the same form and manner as in civil actions.* [AM'D CH. 505 OF 1884.]

People v. Morehouse, 2 Sil. (S. C.) 245; People v. Harris, 28 N. Y. St. Rep. 301; People v. Upton, 29 id. 779; People v. Sweeney, 36 id. 77; People v. Crotty, 30 id. 46; People v Beckwith, 42 Hun, 368; 5 N. Y. Cr. 234.

§ 549. Jurisdiction of appellate court ceases, etc. — After the certificate of the judgment has been remitted as provided in section 547, the appellate court has no further jurisdiction of the appeal, or of the proceedings thereon; and all orders, which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted, or by any court to which the cause may thereafter be removed.

People v. Beckwith, 42 Hun, 368; 5 N. Y. Cr. 234; People v. Lyons, 17 N. Y. St. Rep. 768.

TITLE XII.

Of Miscellaneous Proceedings.

CHAPTER I. Bail.
II. Compelling the attendance of witnesses.
III. Examination of witnesses, conditionally.
IV. Examination of witnesses, on commission.
V. Inquiry into the insanity of the defendent, before or during the trial, or after conviction.
VI. Compromising certain crimes, by leave of the court.
VII. Dismissal of the action, before or after the indictment, for want of prosecution, or otherwise.
VIII. Remitting the punishment, in certain cases.
IX. Proceedings against corporations.
X. Entitling affidavits.
XI. Errors and mistakes, in pleadings and other proceedings.
XII. Disposal of property, stolen or embezzled.
XIII. Reprieves, commutations and pardons.

CHAPTER I.

BAIL.

ARTICLE I. In what cases the defendant may be admitted to bail.
II. Bail, upon being held to answer, before indictment.
III. Bail, upon an indictment, before conviction.
IV. Bail, upon an appeal.
V. Deposit, instead of bail.
VI. Surrender of the defendant.
VII. Forfeiture of the undertaking of bail, or of the deposit of money.
VIII. Re-commitment of the defendant, after having given bail, or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SEC. 550. Admission to bail, defined.
551. Taking bail, defined.
552. Offenses not bailable.
553. In what cases defendant may be admitted to bail, before conviction.
554. In what cases he may be admitted to bail, after conviction and upon appeal.
555. Nature of bail before conviction.
556. Nature of bail after conviction and upon appeal.

§ 550. **Admission to bail defined.** — When the defendant is held to appear for examination, bail for such appearance may be taken either,

1. By the magistrate who issued the warrant or before whom the same is returnable; or

2. By any judge of the supreme court.

§ 551. **Taking bail defined.** — The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum.

Eighth Amend. Cons. U. S., art. 1. § 5, N. Y. Const. The power to admit to bail is incident to power to hear and determine. People v. Van Horne, 8 Barb. 158; People v. Shattuck, 6 Abb. N. C. 33. People v. Tweed, 13 Abb. (N. S.) 148; People v. Huggins, 10 Wend. 465.

§ 552. **Offenses not bailable.**—The defendent can not be admitted to bail except by a judge of the supreme court, or by a court of oyer and terminer where he is charged,

1. With a crime punishable with death,

2. With the infliction of a probably fatal injury upon another, and under such circumstances, as that, if death ensue, the crime would be murder.

If facts do not sustain charge of murder contained in warrant, bail may be allowed. People v. Sheriff of Westchester, 1 Park. 659; People v. Porter, 8 Barb. 168; People v. Beigler, 3 Park, 316; People v. Baker, 10 How. Pr. 567; see also, People v. Collins, 20 How. Pr. 111. People v. Shuttuck, 6 Abb. N. C. 33; People v. Cole, 6 Park. 695; 4 Abb. (N. S.) 280; People v. Hyler, 2 Park. 570; People v. Van Horne, 8 Barb. 158; Ex parte Taylor, 5 Cow. 39; People v. Perry 9 Abb. (N. S.) 27.

§ 553. In what cases defendant may be admitted to bail, before conviction.—If the charge be for any other crime, he may be admitted to bail, before conviction, as follows:

1. As matter of right, in cases of misdemeanor;
2. As a matter of discretion, in all other cases.

Matter of Thomas, 2 N. Y. Cr. 39; People ex rel. Navagh v. Frink, 41 Hun, 188; 4 N. Y. Cr. 289; People ex rel. Sherwin v. Mead, 28 Hun, 227; 92 N. Y. 415.

§ 554. In what cases he may be admitted to bail, before conviction, etc.— Before conviction, a defendant may be amitted to bail,

1. For his appearance before the magistrate, on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required, by section 221, to return the depositions and statements, upon the defendant being held to answer, after examination.

3. After indictment, either upon the bench warrant issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

And any captain or sergeant of police in any city or village of this state may take bail for appearance before a competent and accessible magistrate the next morning from any person arrested for a misdemeanor between two o'clock in the afternoon and eight o'clock the next morning, if a magistrate competent to take the bail be not found within an hour after the arrest. When such captain or sergeant of police takes bail he must take it by an undertaking in the form in this section mentioned, executed in his presence by the defendant and at least one surety who must justify under oath and for that purpose the officer may administer the oath. The amount of bail taken by a captain or sergeant of police under this section must be as follows: If the offense be the violation of a corporation ordinance, the amount of the bail must be one hundred dollars, except that if a conviction upon the charge would render the defendant liable only for a fine, the amount of the bail must be double the largest fine that could be imposed; if the conviction would render him liable to imprisonment for thirty days or less, the amount of bail must be two hundred dollars. In all other cases the amount of bail must be five hundred dollars. The form of the undertaking must be as follows:

We A. B., defendant and , residing at number , in and C. D., defendent,* residing at, hereby jointly and severally undertake that the above A. B., defendant, shall appear and answer

* So in original; surety is meant.

the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the day of , eighteeen hundred and , at o'clock, to answer to the complaint, and there remain to answer, subject to any order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then we will pay to the people of the state of New York, the sum of

People *v.* Clews, 14 Hun, 90; Matter of Gorsline, 21 How. 85; 10 Abb. 282; People *v.* Dixon, 3 id 395; 4 Park. 651; People *v.* Beigler, 3 id. 316; Babcock's Case, 2 Abb. (N. S.) 204.

§ 555. **Nature of bail before conviction.**—After the conviction of a crime not punishable with death, a defendant who has appealed, and when there is a stay of proceedings, but not otherwise, may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only;

2. As a matter of discretion, in all other cases.

§ 556. **Nature of bail after conviction and upon appeal.**—After conviction and upon an appeal, the defendant may be admitted to bail, as follows:

1. If the appeal be from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified or the appeal be dismissed;

2. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Sec. 2060, Code Civ. Pro. not applicable. People *v.* Bauman, 3 N. Y. Cr. 454.

ARTICLE II.

BAIL, UPON BEING HELD TO ANSWER, BEFORE INDICTMENT.

SEC. 557, 558. By what courts or magistrates defendant may be admitted to bail.
559. At what time defendant may be admitted to bail by a magistrate.
560. In cities, if crime be felony, application for admission to bail must be on notice.
561. Form of order, if made by the court.
562. Form of order, if made by a magistrate.
563. If application be denied by a magistrate, no subsequent application can be made to another magistrate.
564. Violation of last section a misdemeanor. Admission to bail in such case, how revoked or vacated.
565. Construction of last two sections.
566. Decision final.
567. Bail, by whom taken.
568. How put in; and form of undertaking.
569. Qualification of bail
570-572. Bail, how to justify.
573. Bail may be examined as to sufficiency.

SEC. 574. Other testimony may be received as to their sufficiency.
575. Decision as to their sufficiency, and filing affidavits of justification and undertaking.
576. On allowance of bail, and execution of undertaking, defendant to be discharged. Form of discharge.
577. If bail disallowed.

§ 557. By what courts or magistrates defendant may be admitted to bail —When the defendant has been held to answer, as provided in section 208, the admission to bail may be by the magistrate by whom he is so held, if he be one of the migistrates mentioned in section 147, and the crime charged is a misdemeanor, or a felony punishable with imprisonment, not exceeding five years; or if he be a judge of the supreme court; or any judge authorized to preside in a court having jurisdiction to try indictments, in all cases where bail may be taken, before conviction, as provided in section 554.

Eagen *v.* Stevens, 39 Hun, 311; People *v.* Dutcher, 83 N. Y. 240; People *v.* Clews, 14 Hun, 90; 77 N. Y. 39; People *v.* Main, 20 id. 434; People *v.* Chapman, 30 How. 202; Ex parte Gorsline, 21 id. 85; 10 Abb. 282; Ex parte Gessner, 53 How. 515; Ex parte Babcock, 2 Abb. (N. S.) 204; People *v.* Huggins, 10 Wend. 404, Doyle *v.* Russell, 30 Barb. 300.

§ 558. Id.—When, by reason of the degree of the crime, the committing magistrate has not authority to admit to bail, the defendant may be admitted to bail by one of the officers having authority to admit to bail in the case, as provided in the second subdivision of the last section, or by the court to which the depositions and statements are returned by the committing magistrate, as provided in section 221, if the case be triable therein, or if not, by the court to which, after indictment, it may be sent or removed for trial.

§ 559. At what time defendant may be admitted, etc.—The defendant may be admitted to bail by a magistrate, as provided in the last two sections, upon being held to answer, or at any time before the return of the depositions and statement, to the court. After that time he can be admitted to bail, only by a judge presiding in the court in which the crime is triable, if it be sitting, or if not, by one of the magistrates mentioned in the second subdivision of section 557.

Court alone can bail while in session. Ex parte Babcock, 2 Abb. Pr. (N. S.) 204. See People *v.* Clews, 77 N. Y. 39; People *v.* Mead, 28 Hun; 227; s. c. 92 N. Y. 415; People *v* Sherwin, 17 W. D. 125.

§ 560. In cities, if crime be felony, etc.—In the several cities of this state, if the crime charged be a felony, the application for admission to bail must be upon notice of at least two days, to the district attorney of the county, unless the magistrate by order fixes a shorter time; and the committing magistrate, upon the like notice, in writing, requiring him to do so, must transmit the depositions and statement,

or a copy thereof, to the court or magistrate to whom the application for bail is to be made.

§ 561. **Form of order, if made by the court.**— If the application be to the court, an order must be made, granting or denying it, and if it be granted, stating the sum in which bail may be taken.

§ 562. **Form of order, if made by a magistrate.**— If the application be to a magistrate, he must certify, in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate the sum in which bail may be taken; which certificate he must cause to be forthwith filed with the clerk of the court to which the depositions and statement are required to be sent.

§ 563. **If application be denied, etc.**—If an application for admission to bail, made to a magistrate, be denied, not more than two subsequent applications therefor can be made to other magistrates, except that an application can be made to any magistrate mentioned in subdivision two of section 557, if no application has been previously made to a magistrate mentioned therein.

See People *v.* Cunningham, 3 Park. 531.

§ 564. **Violation of last section, etc.**— A violation of the last section is punishable as a misdemeanor, and the admission of the defendant to bail contrary thereto may be revoked by the magistrate who made it, or vacated by the court to which the depositions and statement are or must be sent, as provided in section 221, or to which, after indictment, the action must be sent for trial.

§ 565. **Construction of last two sections.**— The provisions of the last two sections shall not be construed to limit the power of any judge presiding in the court in which the offense is triable to let the defendant to bail.

§ 566. **Decision final.**— The decision of the judge presiding in the court in which the crime is triable, granting or denying bail, is final, except as provided in section 563.

§ 567. **Bail, by whom taken.**— If the defendant be admitted to bail by a magistrate, the bail must be taken by the magistrate granting the order, unless the order shall specify that the same may be taken by some other designated magistrate.

§ 568. **How put in; and form of undertaking.**— Bail is put in, by a written undertaking, executed by sufficient surety (with or with-

out the defendant, in the discretion of the magistrate), and acknowledged before the magistrate in substantially the following form:

"An order having been made on the day of , 18 , by A. B., *a justice of the peace of the town of* , (or as the case may be), that C. D. be held to answer, upon a charge of (stating briefly the nature of the crime), upon which he has been duly admitted to bail, in the sum of dollars;

We, (C. D., defendant, if the defendant join in the undertaking), of (stating his place of residence and occupation) and E. F., and G. H. (stating place of residence and occupation) surety, or sureties (as the case may be) hereby undertake, jointly and severally, that the above-named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted; and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York, the sum of dollars" (inserting the sum in which the defendant is admitted to bail).

People *v.* Swales, 33 Hun, 208; People *v.* Gillman, 125 N. Y. 374; People ex rel. Gilbert *v.* Laidlaw, 102 id. 591.

§ 569. **Qualifications of bail.**— The qualifications of bail are as follows:

1. He must be a resident and a house holder or free holder within the state, and, unless the magistrate otherwise direct, within the county;

2. He must be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the magistrate, on taking bail, may require two sureties, or may allow two or more to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of one sufficient surety.

Attorney can not be surety. Rule 5, Sup. Ct.

§ 570. **Bail, how to justify.**— Except as prescribed in the next section, the bail may, in the exercise of a just discretion, be taken, and may justify, without notice to the district attorney, or reasonable notice of the intention to give bail may be required by the court or magistrate, to be given to the district attorney. When given, the notice shall be as prescribed in the next section.

§ 571. **Id.**— In the several cities of this state, if the crime charged be a felony, a previous notice in writing of at least two days, of the

time and place of giving the bail, must be served upon the district attorney of the county, stating:

1. The names, places of residence and occupations of the proposed surety or sureties;

2. A general description of the real or personal property of the surety or sureties, in respect to which they propose to justify as to their sufficiency, with the incumbrances thereon, by mortgage, judgment or otherwise, if any.

The district attorney may waive the giving of the notice herein provided for, or a shorter time than two days may be directed by the court or magistrate requiring the notice.

§ 572. **Id.**— The surety or sureties must in all cases justify by affidavit, taken before the magistrate. The affidavit must state that each of the sureties possesses the qualifications provided in section 569.

See Stratton v. People, 29 Hun, 288; 81 N. Y. 629. See 4 N. Y. Cr. 177.

§ 573. **Bail may be examined, etc.**— The district attorney, or the magistrate, may thereupon further examine the sureties upon oath, concerning their sufficiency, in such manner as the magistrate may deem proper. The questions put to the sureties, and their answers must be reduced to writing, and must be subscribed by them.

§ 574. **Other testimony may be received, etc.**— The magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of proving or disproving its sufficiency.

§ 575. **Decision as to their sufficiency, and filing affidavits and undertaking.**— When the examination is closed, the magistrate must make an order, either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits of justification, and the undertaking of bail, to be filed with the clerk of the court to which the depositions and statement must be sent, as prescribed in section 221.

§ 576. **On allowance of bail, etc.**— Upon the allowance of the bail and the execution of the undertaking, the court or magistrate must make an order, signed by him, with his name of office, for the discharge of the defendant, to the following effect:

"To the sheriff of the county of , [or, in the city and county of New York, "to the keeper of the city prison of the city of New York:"] "A. B., who is detained by you on a commitment to answer a charge for the crime of, [designating it generally,]

having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody."

§ 577. **If bail disallowed.**— If the bail be disallowed, the defendant must be detained in custody until lawfully discharged.

ARTICLE III.

BAIL, UPON AN INDICTMENT BEFORE CONVICTION.

SEC. 578. In misdemeanor, officer to take defendant before a magistrate.
579. In felony, to deliver him into custody.
580. Taking bail, when offense is bailable.
581. Bail, how put in. Form of undertaking.
582. Sections applicable to qualifications of bail, to putting in and justifying bail, and to incidental proceedings.

§ 578. **In misdemeanor, officer to take defendant before a magistrate.**— When the crime charged in the indictment is a misdemeanor, the officer serving the bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail as prescribed in sections 302 and 305.

People *v.* Chapman, 30 How. 202; People *v.* Folmsbee, 60 Barb. 480, Ex parte Gorsline, 21 How. 85; 10 Abb. 282.

§ 579. **In felony, to deliver him into custody.**— If the crime charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant, as prescribed in section 301.

People *v.* Clews, 14 Hun, 90; 77 N. Y. 39.

§ 580. **Taking bail, when offense is bailable.**— When the defendant is so delivered into custody, if the felony charged be bailable, and the amount of bail have been fixed, bail may be taken by the judge presiding in the court in which the indictment was found, or to which it is sent or removed, or by any magistrate in the county belonging to the class mentioned in the second subdivision of section 557.

§ 581. **Bail, how put in; form of undertaking.**— The bail must be put in by a written undertaking, executed by a sufficient surety, with or without the defendants, in the discretion of the magistrate, and acknowledged before the court or its clerk in open court or the magistrate, in substantially the following form:

"An indictment having having been found on the day of , 18 , in the *court of session in the county of Albany* [or as the case may be], charging A. B. with the crime of, [designating it

generally], and he having been duly admitted to bail in the sum of dollars:

"We, A. B., defendant [if the defendant join in the undertaking] and C. D., surety or sureties, as the case may be, of [stating his place of residence and occupation] and E. F., of [stating his place of residence and occupation] hereby jointly and severally undertake, that the above-named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars," [inserting the sum in which the defendant is admitted to bail.]

See § 593, *post*; People *v.* Hammond, 26 N. Y. St. Rep. 486.

§ 582. Sections applicable, etc.—The provisions contained in sections 569 to 577, both inclusive, apply to the qualifications of the sureties, and to all the proceedings respecting the putting in and justification of bail, and incidental thereto.

ARTICLE IV.

BAIL UPON AN APPEAL.

SEC. 583. Who may admit to bail.
584. Notice of the application, when required.
585. Qualifications of bail, and how put in.

§ 583. Who may admit to bail.—In the cases in which the defendant may be admitted to bail upon an appeal, as provided in section 556, the order admitting him to bail may be made, either by the court from which the appeal is taken, or the presiding judge thereof, or by the appellate court, or a judge thereof, or by a judge of the supreme court.

People *v.* Bowe, 58 How. Pr. 398.

§ 584. Notice of the application, when required.—The court or officer to whom the application for bail is made may require such notice thereof as he deems reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

§ 585. Qualifications of bail, and how put in.—The sureties must possess the qualifications, and the bail must be put in all respects, in the manner prescribed by sections 569 to 577, both inclusive; except that the undertaking must be to the effect that the defendant

will, in all respects, abide the orders and judgment of the appellate court upon the appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

SEC. 586. Deposit in lieu of bail for defendant or witness.
587. May be made after bail given, and before forfeiture; and in such case bail discharged.
588. Bail may be given after deposit; and in such case money deposited to be refunded.
589. Deposit to be applied to payment of judgment of fine, and surplus to be refunded.

§ 586. **Deposit in lieu of bail, etc.**— The defendant, at any time after an order admitting him to bail, or a witness committed in default of an undertaking to appear and testify, instead of entering into such an undertaking, may deposit with the county treasurer, of the county in which he is held to answer or appear, the sum mentioned in the order or commitment; and upon delivering to the officer, in whose custody he is, a certificate of the deposit, he must be discharged from custody. [AM'D, CH. 220 OF 1892.]

People ex rel. Gilbert v. Laidlaw, 102 N. Y. 591; Egan v. Stevens, 39 Hun, 314.

§ 587. **May be made after bail given, etc.**— If the defendant have given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking; and upon the deposit being made the bail is exonerated.

People ex rel. Gilbert v. Laidlaw, 102 N. Y. 591.

§ 588. **Bail may be given after deposit, etc.**—If money be deposited, as provided in the last section, bail may be given, in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken must thereupon direct, in the order of allowance, that the money deposited be refunded by the county treasurer to the defendant; and it must be refunded accordingly.

People ex rel. Gilbert v. Laidlaw, 102 N. Y. 591.

§ 589. **Deposit to be applied, etc.**—When money has been deposited, if it remain on deposit and unforfeited at the time of a judgment for the payment of a fine, the county treasurer must, under direction of the court, apply the money in satisfaction thereof, and after satisfying the fine, must refund the surplus, if any, to the defendant.

People ex rel. Gilbert v. Laidlaw, 102 N Y. 592.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

SEC. 590. Surrender, by whom, when, and how made.
591. By whom, when and where, defendant may be arrested for the purpose of a surrender.
592. On surrender before forfeiture, money deposited to be refunded. Order therefor, how obtained.

§ 590. **Surrender, etc.**— At any time before the forfeiture of the undertaking, any surety may surrender the defendant in his exoneration, or the defendant may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing, acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the court in which the indictment or the appeal, as the case may be, is pending, may, upon a notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, the bail is exonerated accordingly.

People ex rel. Gilbert *v.* Laidlaw, 102 N. Y. 591.

§ 591. **By whom, when and where, defendant may be arrested for the purpose of a surrender.** — For the purposeof surrendering the defendant, any surety, at any time before he is finally charged, and at any place within the state, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

§ 592. **On surrender before forfeiture, etc.** — If money have been deposited instead of bail and the defendant at any time before the forfeiture thereof surrender himself to the officer to whom the commitment was directed in the manner provided in section 590, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of this certificate.

People ex rel. Gilbert *v.* Laidlaw, 102 N. Y. 591. See 2 N. Y. Cr. 416.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

SEC. 593. In what cases, and how ordered.
594. When and how forfeiture may be discharged.
595. Forfeiture of bail, to be enforced by action.
596. Deposit of money when forfeited, how disposed of.
597. Remission of forfeiture.
598. Application therefor, how made and on what terms granted.

§ 593. In what cases, and how ordered.—If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes; and the undertaking of his bail, or the money deposited, instead of bail, as the case may be, is thereupon forfeited.

When bail released. People *v.* Clary, 17 Wend. 374; People *v.* Green, 5 Hill, 647; People *v.* Stager, 10 Wend. 431; People *v.* Derby, 1 Park. 392; People *v.* Mack, ibid. 567. What does not amount to a release. People *v.* Anable, 7 Hill, 33; People *v.* McCoy, 39 Barb. 73. What amounts to a forfeiture. People *v.* Petry, 2 Hilt. 523; People *v.* Blankman, 17 Wend. 252; People *v.* Wilgus, 5 Den. 58. What will excuse default. People *v.* Bartlett, 3 Hill, 570; People *v.* Haines, 1 Den. 454; People *v.* Chusney, 44 Barb. 118; People *v.* Cook, 30 How. Pr. 110. People *v.* Scott, 67 N. Y. 585; People ex rel. Van Aken *v.* Millham, 100 id. 273; 4 N. Y. Cr. 127; People *v.* Swales, 33 Hun, 208.

§ 594. When and how forfeiture may be discharged.—If, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or deposit to be discharged, upon such terms as are just.

For terms, see People *v.* Coman, 49 How. Pr. 91; 5 Daly. 527.

§ 595. Forfeiture of bail, to be enforced by action.—If the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed against any surety upon his undertaking. Such proceeding shall be by action only, except in the city and county of New York, where it shall be in the method now prescribed by special statute.

§ 596. Deposit of money when forfeited, how disposed of.—If, by reason of the neglect of the defendant to appear, as provided in section 593, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in sections 594 and 597, the county treasurer with whom it is deposited may at any time after the final adjournment of the court apply the money deposited to the use of the county.

§ 597. Remission of forfeiture.— After the forfeiture of the undertaking or deposit, as provided in this article, the court directing the forfeiture, the county court of the county, or in the city of New York, the court of common pleas of that city, may remit the forfeiture or any part thereof, upon such terms as are just.

See section 350 of Code of Civ. Pro. People *v.* Spear, 1 N. Y. Cr. 538; People *v.* Fisher, 14 Daly, 278; People *v.* Meehan, id. 333; People *v.* Boessemeeker, 27 W. Dig. 387; People *v.* Grossman, 5 N. Y. Supp. 446; People *v.* Flegenheimer, 15 N. Y. St. Rep. 376; People *v.* Street, 38 id. 801.

§ 598. Application therefor, etc.— The application must be upon at least five days' notice to the district attorney of the county served with copies of the affidavits and papers on which it is founded, and can be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.

People *v.* Spear, 1 N. Y. Cr. 538; People ex rel. Gilbert *v.* Laidlaw, 103 N. Y. 588.

ARTICLE VIII.

RE-COMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL, OR DEPOSITED MONEY INSTEAD OF BAIL.

SEC. 599. In what cases.
600. Contents of the order.
601. Defendant may be arrested in any county.
602. If for failure to appear for judgment, defendant must be committed.
603. If for other cause, he may be admitted to bail.
604. Bail in such case, by whom taken.
605. Form of the undertaking.
606. Qualifications of bail, and how put on.

§ 599. In what cases.—The court to which the committing magistrate returns the deposition and statement, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, or if the court be not in session, any judge thereof may direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time he was admitted to bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 593.

2. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the state.

3. Upon an indictment being found, in the cases provided in section 306.

See §§ 299, 300, 306, 475, 593, *ante*.

§ 600. **Contents of the order.**—The order for the recommitment of the defendant must recite, generally, the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal or policeman in this state, and committed to the officer to whose custody he was committed, at the time he was admitted to bail, to be detained until legally discharged.

§ 601. **Defendant may be arrested in any county.** — The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest; except, that when arrested in another county, the order need not be endorsed by a magistrate of that county.

§ 602. **If for failure to appear for judgment, defendant must be committed.** — If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

§ 603. **If for other cause, he may be admitted to bail.** — If the order be made for any other cause, and the crime be bailable, the court may fix the amount of bail, and may direct in the order, that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

§ 604. **Bail in such case, by whom taken.** — When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority, in a similar case, to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in sections 557 and 558, or by any other magistrate to be designated by the court.

§ 605. **Form of the undertaking.**— When bail is taken upon the recommitment of the defendant, the undertaking of bail must be in substantially the following form:

"An order having been made on the day of , 18 , by the court of (naming the court), that A. B. be admitted to bail in the sum of dollars, in an action pending in that court against him in behalf of the people of the state of New York, upon an [information, presentment, indictment, or appeal, as the case may be.]

"We A. B., defendant (if the defendant join in the undertaking,) and C. D., surety of [stating his place of residence and occupation,] and E. F., surety of [stating his place of residence and occupation,] hereby jointly and severally, undertake that the above-named A. B.

shall appear in that or any other court in which his appearance may be lawfully required, upon that [information, presentment, indictment or appeal, as the case may be,] and shall at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof or if he fail to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars, [inserting the sum in which the defendant is admitted to bail.]

§ 606. **Qualifications of bail, etc.**— The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed by sections 569 to 577, inclusive.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

SEC. 607. Subpœna, defined.
608. Magistrate may issue subpœnas, on information or presentment.
609. District attorney may issue subpœnas for witnesses before grand jury.
610. He may also issue subpœnas, for the people, on trial of an indictment.
611. Clerk may issue blank subpœnas, for witnesses for defendant, on trial.
612. Form of subpœna.
613. Requirement in subpœna, to produce books, papers and documents.
614. Subpœna, by whom served.
615. How served.
616. Payment of expenses of witness, when he is from without the county, or is poor.
617. Same.
618. Witnesses residing or served with subpœna, out of the county, when and how compelled to attend.
619. Disobedience to subpœna, or refusal to be sworn or to testify, how punished.

§ 607. **Subpœna, defined.**— The process by which the attendance of a witness, before a court or magistrate is required, is a subpœna.

§ 608. **Magistrate may issue subpœnas, etc.**—A magistrate, before whom an information is laid, may issue subpœnas, subscribed by him, for witnesses within the state, either on behalf of the people or of the defendant.

§ 609. **District attorney may issue subpœnas for witnesses before grand jury.**—The district attorney of the county may issue subpœnas, subscribed by him, for witnesses within the state, in support of the prosecution or for such other witnesses as the grand jury may direct, to appear before the grand jury, upon an investigation pending before them.

§ 610. Id.; for the people, on trial, etc.—The district attorney may, in like manner, issue subpœnas subscribed by him, for witnesses within the state, in support of an indictment, to appear before the court at which it is to be tried.

§ 611. Clerk may issue blank subpœnas for witnesses for defendant, on trial.—The clerk of a court at which an indictment is to be tried, must at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the state, as may be required by the defendant.

Sherwin v. People, 100 N. Y. 351.

§ 612. Form of subpœna.—A subpœna, authorized by the last four sections, must be substantially in the following form:

"In the name of the people of the state of New York:

"To A. B.

"You are commanded to appear before *C. D., a justice of the peace of the town of* , [or "the grand jury of the county of ," or "the court of sessions of the county of ," or as the case may be,] at [naming the place,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the state of New York, against E. F.

"Dated at the town of , [as the case may be,] the day of , 18 .

"G. H., justice of the peace," [or "I. K., district attorney," or "By order of the court, L. M., clerk," as the case may be.]

Sherwin v. People, 100 N. Y. 351.

§ 613. Requirement in subpœna to produce, etc.—If books, papers or documents be required, a direction to the following effect must be contained in the subpœna: "And you are required also, to bring with you the following," [describing intelligibly the books, papers or documents required.]

§ 614. Subpœna, by whom served.—A peace officer must serve, in his county, city, town or village, as the case may be, any subpœna delivered to him for service, either on the part of the people or of the defendant; and must make a written return of the service, subscribed by him, stating the time and place of service, without delay A subpœna may, however, be served by any other person.

§ 615. How served.—A subpœna is served, by delivering it, or by showing it, and delivering a copy thereof, to the witness personally.

§ 616. Payment of expenses of witness, when he is from without the county, or is poor.— When a person attends before a magistrate, grand jury or court, as a witness on behalf of the people, upon a subpœna, or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order entered upon its minutes, or in any other case, the county judge, or in the city of New York, the recorder or city judge, or judge of the general sessions of that city, by a written order, may direct the county treasurer to pay the witness a reasonable sum, to be specified in the order, for his expenses.

See §§ 394, *ante*; 731, *post*.

§ 617. Id.— Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

§ 618. Witnesses, etc., out of the county, when and how compelled to attend.— No person is obliged to attend as a witness, before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the judge of the court in which the crime is triable, or a judge of the supreme court, or a county judge, or in the city of New York, the recorder or city judge, or judge of the general sessions of that city, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness is material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

§ 619. Disobedience to subpœna, etc., how punished.— Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt in the manner provided in the Code of Civil Procedure.

See Code Civil Proc §§ 8-13, 853-863. Sub. 4, § 143 of Penal Code. Witness is to be allowed a reasonable time to attend. Wilkie *v.* Chadwick, 13 Wend. 49. Extreme poverty will excuse non-attendance. People *v.* Davis, 15 Wend. 602. When subpœna is defective. People *v.* Dutcher, 3 Abb. (N. S.) 151. When not. People *v.* Van Wyck, 2 Cal. 233. A refusal of a witness to answer before grand jury, may be punished as a contempt in court. People *v.* Kelly, 24 N. Y. 74; People *v.* Fancher, 2 Hun, 226. Proof for an attachment against witness failing to answer need not be in writing. Baker *v.* Williams, 12 Barb. 527. Legislative Proceedings. People ex rel. Keeler *v.* McDonald, 99 N. Y. 463. District attorney's subpœna. People *v.* Sherwin, 100 N. Y. 351; 36 Hun, 280; 4 N. Y. Cr. 75. Refusal to answer. People *v.* Davidson, 35 Hun, 471. People ex rel. Sherwin *v.* Mead, 26 Hun, 287; 92 N. Y. 415; 3 N. Y. Cr. 524; People *v.* Sharp, 45 Hun, 493.

CHAPTER III.

EXAMINATION OF WITNESSES, CONDITIONALLY.

SEC. 620. Witnesses to be examined conditionally, for the defendant as provided in this chapter.
621. In what cases defendant may apply for order.
622. Application, on what facts to be founded.
623. If during term, to be made to the court.
624. If not during term, to whom to be made.
625. The order, when granted and what to contain.
626. If made by the court, may direct examination before a judge or magistrate. If made by a judge, examination to be before him.
627. On proof of service, if district attorney absent, examination to proceed.
628. If facts on which order was founded, be disproved, examination not to proceed.
629. Testimony, how taken and authenticated.
630. Deposition, how, by whom and when filed.
631. When it may be read in evidence.
632. When to be excluded.
633. On reading the deposition, on trial, what objections may be taken.
634. Attendance of witness for examination, how compelled.
635. Disobedience of witness, how punished.

§ 620. Witnesses to be examined conditionally for the defendant, etc.— When a defendant has been held to answer a charge of a crime, he may, either before or after indictment, have witnesses examined conditionally on his behalf, as prescribed in this chapter, and not otherwise.

People v. Guidici, 100 N. Y. 506; 3 N. Y. Cr. 557; People v. Squire, 4 id. 562.

§ 621. In what cases defendant may apply for order.— When a material witness for the defendant is about to leave the state, or is so sick or infirm, as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Foreign witness, temporarily present, may be so examined. Wait v. Whitney, 7 Cow. 69. People v. Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557. See sub. 5, § 872 of Code of Civil Procedure. See note in 1 Sil. (S. C.) 2.

§ 622. Application, on what facts, etc.— The application must be made upon affidavit, showing:

1. The nature of the crime charged;
2. The state of the proceedings in the action;
3. The name and residence of the witness, and that his testimony is material to the defense of the action; and
4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

See citations under last section.

§ 623. If during term, to be made to the court.— The application, if made during the term, must be made to the court.

People v. Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 624. If not during term, to whom to be made.—If not made during the term, it may be made as follows:

1. When the indictment is pending in a court of oyer and terminer, or in a court of sessions other than in the city of New York, to a judge of the supreme court, or to the county judge;

2. When the indictment is pending in the court of general sessions of the city of New York, to the recorder or city judge or judge of general sessions, or one of the judges of the court of common pleas of that city;

3. When the indictment is pending in a city court, to the recorder or city judge of the city in which it is pending.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 625. The order, when granted and what to contain.—If the court or officer be satisfied that the examination of the witness is necessary to the attainment of justice, an order must be made, that the witness be examined conditionally, at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the district attorney, within a specified time before that fixed for the examination.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 626. If made by the court, may direct examination before a judge or magistrate, etc.—If the order be made by the court, it may direct that the examination be taken before a judge thereof, or before a magistrate in the county, to be named in the order. If made by any of the officers mentioned in section 624, it must direct the examination to be taken before him.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 627. On proof of service, etc, examination to proceed.—On proof being furnished to the officer before whom the examination is appointed, of the service upon the district attorney, of a copy of the order, and of the affidavit on which it was granted, if no counsel appear on the part of the people, the examination must proceed.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 628. If facts on which order was founded, be disproved, examination, etc.—If the district attorney or other counsel appear on the part of the people, and it be shown to the satisfaction of the court or officer, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of

the witness on the trial, the examination can not take place; otherwise it must proceed.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 629. **Testimony, how taken and authenticated.**— The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information, as prescribed in section 200.

See section 200, *ante*. Defective depositions. People *v.* Restell, 3 Hill, 289; People *v.* Ward, 4 Park. 516; People *v.* Chrystal, 8 Barb. 545. Foster *v.* Bullock, 12 Hun, 200; Sheldon *v.* Wood, 24 N. Y. 607; 2 Bosw. 267; McDonald *v.* Garrison, 18 How. 249; 9 Abb. 34; People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 630. **Deposition, how, by whom and when filed.**— The deposition must be retained by the officer taking it, and filed by him in the office of the clerk of the court without unnecessary delay.

Deposition may be ordered filed *nunc pro tunc*. Burdell *v.* Burdell, 1 Duer, 625; Bank of Silver Creek *v.* Browning, 16 Abb. 272; People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 631. **When it may be read in evidence.**— The deposition, or a certified copy thereof, may be read in evidence by either party on trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state.

Inability must exist at time of trial to entitle deposition to be read. Fry *v.* Bennett, 4 Duer, 247. See Donnell *v.* Walsh, 6 Bosw. 621. What is sufficient proof of inability. Bronner *v.* Frauenthal, 37 N. Y. 166; Markoe *v.* Aldrich, 1 Abb. Pr. 55. Sheldon *v.* Wood, 24 N. Y. 607; 2 Bosw 267; People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557; Mut. L. I. Co. *v.* Nat. B. & L. Co. 50 Hun, 105.

§ 632. **When to be excluded.**— The deposition can not, however, be read, if it appear that the copy of the order and of the affidavit on which it was founded, was not served on the district attorney, as directed, or that the examination was in any respect unfair or not conducted as prescribed in this chapter.

There must be an opportunity to cross-examine. Hewlett *v.* Wood, 67 N. Y. 394; 7 Hun, 227. If consent given to read deposition, it can not be withdrawn. Beebe *v.* People, 5 Hill, 32. Starin *v.* Atlantic Mut. Ins. Co. 63 N. Y. 77; 38 Supr. 281; Elverson *v.* Vanderpoel, 41 id. 257; People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 633. **On reading deposition, on trial, what objections may be taken.** — Upon the reading of the deposition in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court.

Objections to the competency of the witness. Ex parte Kip, 1 Pai. 601; People *v.* Guidici, 100 N. Y. 503; 3 N. Y. Cr. 557.

§ 634. Attendance of witness for examination, how compelled.— The attendance of the witness may be enforced, by a subpœna subscribed by the officer, or issued under the seal of the court.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557.

§ 635. Disobedience of witness, how punished. — Disobedience to the subpœna, or a refusal to be sworn or to testify, may be punished by the court or officer, as prescribed in section 619.

People *v.* Guidici, 100 N. Y. 507; 3 N. Y. Cr. 557; People ex rel. Munsell *v.* Court, etc. 101 N. Y. 251; 4 N. Y. Cr. 75; 3 How. (U. S.) 418; People *v.* Sharp, 45 Hun, 493.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

SEC. 636. Witness residing out of the state, to be examined for defendant, as provided in this chapter.
637. In what cases defendant may apply for order to examine witnesses on commission.
638. Commission defined.
639. Application for commission, on what facts to be founded.
640. If during term, to be made to the court.
641. If not during term, to whom to be made.
642. Notice of application, when required and how given.
643 Order of commission, when granted
644. Trial to be stayed until execution and return of commission.
645. Interrogatories, and notice of settlement.
646. Cross-interrogatories, and notice of settlement.
647, 648 What may be inserted in interrogatories.
649. Direction as to return of commission.
650. Commission, how executed.
651. Copy of last section to be annexed to commission.
652, 653. Commission, how returned, when delivered to agent for that purpose
654. When and how filed.
655. Commission returned by mail, how disposed of
656. Commission and return to be open for inspection, and copies to be furnished.
657. Deposition to be read in evidence. What objections may be taken thereto.

§ 636. Witness residing out of the state, etc. — When an issue of fact is joined upon an indictment, the defendant may have any material witness residing out of the state examined in his behalf, as prescribed in this chapter, and not otherwise.

These provisions only relate to trials on indictment. People *v.* Haight, 3 N. Y. Cr. 60; 13 Abb. N. C. 197.

§ 637. In what cases defendant may apply for, etc. — When a material witness for the defendant resides out of the state, the defendant may apply for an order that the witness be examined on a commission.

Commissions are statutory proceedings solely, and must be strictly pursued Dwinnelle *v.* Howland, 1 Abb. Pr. 87; Cleamer *v.* Jackson, 4 Id. 413; McCall *v.* Sun Mut. Ins. Co. 50 N. Y. 332; 2 J. & Sp. 310. New commission for examination of same witnesses may issue. Fisher *v.* Dale, 17 Johns. 343; Raney *v.* Weed. 1 Barb. 220; or may be ordered re-executed Baker *v.* Spencer, 47 N. Y. 562. McMonagle *v.* Conkey, 14 Hun, 326; Rathbun *v.* Ingersoll, 34 Supr. 211.

§ 638. Commission defined.— A commission is a process issued under the seal of the court, and the signature of the clerk, directed to one or more persons, designated as commissioners, authorizing them to examine the witness upon oath, on interrogatories annexed thereto, and to take and return the deposition of the witness, according to the directions given, with the commission.

§ 639. Application for commission, on what facts, etc.— The application must be made upon affidavit, showing:

1. The nature of the crime charged;

2. The state of the proceedings in the action, and that issue of fact has been joined therein;

3. The name of the witness, and that his testimony is material to the defense of the action;

4 That the witness resides out of the state,

Sub 3 Need not state what proof expected Eaton v. North, 7 Barb. 631; affidavit may be made by agent or attorney id. People v. Haight. 13 Abb. N. C. 199: 3 N. Y. Cr 102.

§ 640 If during term, to be made to the court.— The application, if made during the term, must be made to the court.

§ 641. If not during term, to whom to be made.— If not made during the term, the application may be made as follows:

1. When the indictment is pending in a court of oyer and terminer, or in a court of sessions, except in the city and county of New York, to a judge of the supreme court or to the county judge;

2. When the indictment is pending in the court of general sessions in the city and county of New York, to the recorder or city judge or judge of general sessions, or one of the judges of the court of common pleas, of that city;

3. When the indictment is pending in a city court, to the recorder or judge of the court in which it is pending.

§ 642. Notice of application, etc.— If the application be made to the court, it may be without notice to the district attorney, unless the court directs notice to be given, in which case it must prescribe the manner of giving the same. If made to one of the officers mentioned in the last section, the application must be upon five days' notice to the district attorney, served with a copy of the affidavit upon which it is founded.

§ 643. Order for commission, when granted. — If the court or officer to whom the application is made, be satisfied that the witness resides out of the state, and that his examination is necessary to the

attainment of justice, an order must be made that a commission be issued to take his testimony, and that the people be permitted to join in the commission, and to examine witnesses in support of the indictment.

Naming of Commissioners. Harris *v.* Wilson, 2 Wend. 627; Townsend *v.* N. Y. Ins. Co. 1 Cal. 4. Who may act as such, Lewis *v.* Van Loon, 3 Id. 105. Exhibits. Butler *v.* Lee, 32 Barb. 75. People *v.* Haight, 13 Abb. N. C. 199; 3 N. Y. Cr. 60.

§ 644. **Trial to be stayed until execution and return of commission.**— If the application for a commission be granted, the court or judge must insert in the order therefor, a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

When stay should be vacated. Voss *v.* Fielden, 2 Sand. 690. People *v.* Haight, 13 Abb. N. C. 199; 3 N. Y. Cr. 60.

§ 645. **Interrogatories, and notice of settlement.** — When the commission is ordered, the defendant must serve upon the district attorney, and the district attorney, if he intend to join in the commission and examine witnesses in support of the indictment, must serve upon the defendant or his counsel, a copy of the interrogatories to be annexed thereto, with a notice of two days of their settlement, before an officer who might have granted the order out of term, as provided in section 641.

People *v.* Haight, 13 Abb. N. C. 199; 3 N. Y. Cr. 60.

§ 646. **Cross-interrogatories and notice of settlement.** — The district attorney, and the defendant, may, in the same manner, serve cross-interrogatories, to be annexed to the commission, with the like notice of the settlement thereof.

§ 647. **What may be inserted in interrogatories.**—In the interrogatories, either party may insert any question pertinent to the issue.

See McDonald *v.* Garrison, 2 Hilt. 510; Blaisdell *v.* Raymond, 9 Abb. Pr. 178 n; People *v.* Haight, 13 Abb. N. C. 199; 3 N. Y. Cr. 60.

§ 648. **Id.**— Upon the settlement of the interrogatories, the judge must expunge every question not pertinent to the issue, and modify the questions, so as to conform them to the rules of evidence, and when settled, must indorse upon them his allowance, and annex them to the commission.

People *v.* Haight, 13 Abb. N. C. 201; 3 N. Y. Cr. 60.

§ 649. **Direction as to return of commission.**— Unless the parties otherwise consent, by an indorsement upon the commission, the

officer must indorse thereon a direction, as to the manner in which it must be returned; and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the indictment is pending, designating his name and the place where his office is kept.

Unless returned as directed, it can not be read. Richardson v. Gere, 21 Wend. 156. People v. Wise, 3 N. Y. Cr. 304; 2 How. (N. S.) 92.

§ 650. Commission, how executed.— The commissioners, or any one of them, unless otherwise specially directed, may execute the commission as follows:

1. They must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth;

2. They must cause the examination of the witness to be reduced to writing;

3. They must write the answers of the witness, as nearly as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it, until it is made conformable to what he declares is the truth;

4. If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated;

5. If papers or documents are produced before them, and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness, and certified by the commissioners;

6. The commissioners must subscribe their names to each sheet of the deposition, and annex the deposition, with the papers or documents proved by the witness, to the commission, and must close it up under seal, and address it, as directed thereon.

7. If there be a direction on the commission, to return it by mail, the commissioners must immediately deposit it in the nearest post-office. If any other direction be made, by the written consent of the parties, or by the officer, on the commission, as to its return, they must comply with the direction.

Subd. 1. When witnesses may be sworn by local authorities. Lincoln v. Batelle, 6 Wend 475

Subd. 3 When foreign language may be used. Leech v. Atlantic Mut. Ins. Co. 4 Daly, 518.

Subd. 4. Refusal to answer material cross-interrogatory, ground for rejecting entire deposition. Smith v. Griffith, 8 Hill, 383. Answer though not full, if not clearly evasive, sufficient. See Baker v. Spencer, 47 N. Y. 562; Terry v. McNeil, 58 Barb. 241.

Subd. 5. Annexing exhibits. Howard v. Orient Ins. Co. 9 Bos. 645; Woodruff v. Shepherd, 6 Cow. 444. Exhibits, how identified. Brumskill v. James, 11 N. Y. 294.

Subd. 7. It is no objection that depositions were not immediately mailed. Halleran v. Field, 23 Wend. 88; see Pendell v. Coon, 20 N. Y. 134. See People v. Wise, 33 N. Y. Cr. 304; 2 How. (U. S.) 92.

§ 651. Copy of last section to be annexed to commission.— A copy of the last section must be annexed to the commission.

§ 652. Commission, how returned, when delivered to agent, etc. If the commission and return be delivered by the commissioners to an agent, he must deliver it to the clerk to whom it is directed, or to a judge of the court in which the indictment is pending, by whom it may be received and opened, upon the affidavit of the agent, that he received it from the hands of one of the commissioners, and that it has not been opened or altered since he received it.

Affidavit of agent is indispensable. Dwinelle *v.* Howland, 1 Abb. Pr. 87.

§ 653. Id.— If the agent be dead, or from sickness or other casualty, unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty, unable to deliver it, that it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioners.

§ 654. When and how filed.— The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

§ 655. Commission returned by mail, how disposed of.— If the commission and return be transmitted by mail, the clerk to whom it is addressed must open and file it in his office, where it must remain, unless the court otherwise direct.

Deposition can not be read until actually filled. Parker *v.* Hobby, 20 Johns. 357; Oneida, etc.; Society *v.* Lawrence, 4 Cow. 440.

§ 656. Commission and return to be open for inspection, and copies to be furnished — The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees, at the rate of five cents for every hundred words.

See § 961 of Code of Civ. Pro.

§ 657. Deposition to be read in evidence, etc. What objections may be taken thereto.— The deposition, taken under the commission, may be read in evidence by either party on the trial, and the same objections may be taken to a question in the interrogatories, or to an

answer in the deposition, as if the witness had been examined orally in court.

Mere formal defects are to be disregarded. Rust v. Eckler, 41 N. Y. 488; Goodyear v. Vosburgh, 41 How. Pr. 421; Hall v. Barton, 25 Barb. 274; McCleary v. Edwards, 27 ib. 239. Informal parts may be excluded. Commercial Bank v. Union Bank, 11 N. Y. 203 Objections must specifically point out errors. Dalton v. National, etc., Society, 20 N. Y. 32. When answers will be excluded. See Lansing v. Coley, 13 Abb. Pr. 272; Railway, etc., Co. v. Warner, 1 S. C. 21, add.; Fassin v. Hubbard, 55 N. Y. 465; Heineman v. Hurd; 2 Hun, 324; Meyer v. Levy, 54 How. Pr. 274. Deposition may be read though witness present, but other side may call and examine him. Phenix v. Baldwin, 14 Wend. 62. If answers to direct interrogatory be excluded; those to cross id. dependent thereon must also be. Fleming v. Hollenbeck, 7 Barb. 271. Discretionary power of court upon objections Cope v. Sibley, 12 Barb. 521; Hazlewood v. Heminway, 3 S. C. 787. People v. Haight, 13 Abb. N. C. 201; 3 N. Y. Cr. 62.

CHAPTER V.

INQUIRY INTO THE INSANITY OF THE DEFENDANT, BEFORE OR DURING THE TRIAL, OR AFTER CONVICTION.

SEC. 658. Appointment of commission; their proceedings.
659. If found insane, trial or judgment suspended, and defendant to be committed to state lunatic asylum, if his discharge be dangerous to the public peace or safety.
660. If defendant committed, bail exonerated or deposit of money refunded.
661. Detention of defendant in asylum, and proceedings on his becoming sane.
662. Expenses incident to sending defendant to asylum, how paid.

§ 658. Appointment of commission; their proceedings.— When a defendant pleads insanity as prescribed in section 336, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons, to examine him and report to the court as to his sanity at the time of the commission of the crime.

If a defendant in confinement, under indictment, appears to be at any time before or after conviction, insane, the court in which the indictment is pending, unless the defendant is under sentence of death, may appoint a like commission to examine him and report to the court as to his sanity at the time of the examination.

The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed in the Code of Civil Procedure, to be taken by referees. They must be attended by the district attorney of the county, and may call and examine witnesses and compel their attendance. The counsel of the defendant may take part in the proceedings. When the commissioners have concluded their examination they must forthwith report the facts to the court with their opinion thereon.

See § 20 of Penal Code. Commissioner's oath. Code Civ. Proc. § 1016; People v. Rhinelander, 2 N. Y. Cr. 335. People v. Haight, 13 Abb. N. C. 196; 3 N. Y. Cr. 60; People ex rel. Mooney v. Walsh, 21 Abb. N. C. 299; People v. McElvaine, 125 N. Y. 690.

§ 659. If found insane, trial or judgment suspended, etc. — If the commission find the defendant insane the trial or judgment must be suspended, until he becomes sane; and the court, if it deem his discharge dangerous to the public peace or safety, must order that he be, in the meantime, committed by the sheriff to a state lunatic asylum, and that upon his becoming sane, he be re-delivered by the superintendent of the asylum to the sheriff.

People *v.* Haight, 13 Abb. N. C 198; 3 N. Y. Cr. 60; People ex rel. Mooney *v.* Walsh, 21 Abb. N. C. 299, n.; People *v.* Rhinelander, 2 N. Y. Cr. 388.

§ 660. If defendant committed, bail exonerated, etc. — The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

§ 661. Detention of defendant, etc. — If the defendant be received into the asylum, he must be detained there until he become sane. When he becomes sane, the superintendent must give a written notice of that fact to a judge of the supreme court of the district in which the asylum is situated. The judge must require the sheriff without delay to bring the defendant from the asylum, and place him in the proper custody until he be brought to trial, judgment, or execution as the case may be, or be legally discharged.

People *v.* Haight, 13 Abb. N. C. 198; 3 N. Y. Cr. 61.

§ 662. Expenses incident to sending defendant to asylum, how paid. — The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are, in the first instance, chargeable to the county from which he was sent; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county, bound to provide for and maintain him elsewhere.

CHAPTER VI.

COMPROMISING CERTAIN CRIMES, BY LEAVE OF THE COURT.

SEC. 663. Certain crimes, for which the party injured has a civil action, may be compromised.
664. Compromise to be by permission of the court. Order thereon.
665. Order, a bar to another prosecution.
666. No public offense to be compromised, except as provided in this chapter.

§ 663. Certain crimes, for which the party injured has a civil action, may be compromised.— When a defendant is *brought before a magistrate, or* is held to answer on a charge of a misdemeanor, for

which the person injured by the act constituting the crime has a remedy by civil action, the crime may be compromised, as provided in the next section, except when it was committed,

1. By or upon an officer of justice while in the execution of the duties of his office;

2. Riotously; or

3. With an intent to commit a felony. [AM'D CH. 63 of 1884.]

Gallagher v. Stoddard, 47 Hun, 101, 103.

§ 664. Compromise to be by permission of the court; order thereon.— If the party injured appear before the *magistrate, or before the* court to which the depositions and statements are required, by section two hundred and twenty-one, to be returned at any time before trial *or commitment by the magistrate, or trial* on indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the *magistrate or* court may, in *his or* its discretion, on payment of the costs *and expenses* incurred, if *such magistrate or court* shall see fit so to direct, order all proceedings to be stayed upon the prosecution and the defendant be discharged therefrom. But in that case, the reason for the order must be set forth therein and entered upon the minutes. [AM'D CH. 63 OF 1884.]

Can not compromise after conviction. People v. Bishop, 2 Wend. 111. Nor stay trial because civil action pending, but may sentence. People v. Judges of Genesee, 13 Johns. 85; Fagan v. Knox, 66 N. Y. 525; reversing, 8 J. & Sp. 41. Gallagher v. Stoddard, 47 Hun, 101, 103.

§ 665. Order, a bar to another prosecution.— The order authorized by the last section is a bar to another prosecution for the same offense.

§ 666. No public offense to be compromised, etc.—No crime can be compromised, nor can any proceeding for the prosecution or punishment thereof upon a compromise, be stayed, except as provided in sections 663 and 664.

CHAPTER VII.

DISMISSAL OF THE ACTION, BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SEC. 667. Dismissal, when a person held to answer is not indicted at the next term thereafter.

668. When a person indicted is not brought to trial at the next term thereafter.

669. Court may order action to be continued, and in the mean time discharge defendant from custody, on his own undertaking, or on bail.

670. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.

SEC. 671. Court may order indictment to be dismissed.
672. Nolle prosequi abolished; no indictment to be dismissed or abandoned, except according to this chapter.
673. Dismissal, a bar, in misdemeanor; but not in felony.

§ 667. Dismissal, when a person held to answer, etc. — When a person has been held to answer for a crime, if an indictment be not found against him, at the next term of the court at which he is held, to answer, the court may on application of the defendant order the prosecution to be dismissed, unless good cause to the contrary be shown.

§ 668. When a person indicted is not brought to trial at the next term thereafter.—If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown.

People v. Smith, 2 N. Y. Cr. 45. People, etc., v. Warden, C. P. 11 W. D. 271; People v. Beckwith, 2 N. Y. Cr. 29.

§ 669. Court may order action to be continued, etc. — If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

People v Beckwith, 2 N. Y. Cr. 29.

§ 670. If action dismissed, defendant to be discharged, etc. — If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

People v. Beckwith, 2 N. Y. Cr. 29.

§ 671. Court may order indictment to be dismissed. — The court may, either of its own motion, or upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed.

People v. Beckwith, 2 N. Y. Cr. 29; People v. Smith, id. 45. See 15 N. Y. Supp. 530.

§ 672. Nolle prosequi abolished, etc.— The entry of a *nolle prosequi* is abolished; and neither the attorney-general, nor the district

attorney, can discontinue or abandon a prosecution for a crime except as provided in the last section.

§ 673. Dismissal, a bar, in misdemeanor, but not in felony.— An order for the dismissal of the action, as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar, if the offense charged be a felony.

See § 9, *ante*.

CHAPTER VIII.

REMITTING THE PUNISHMENT, IN CERTAIN CASES.

SEC. 674. Punishment, upon conviction of a master of a vessel from a foreign country.

§ 674. Punishment, etc.— When the master of a vessel arriving from a foreign country is convicted of having knowingly brought a person convicted therein of a crime, which, if committed in this state, would be a felony, to a place within the state, the court before which the conviction is had may, if satisfied that the defendant has reconveyed the convict to the place from which he took him, and on payment of the costs of prosecution, order the punishment upon the conviction to be remitted.

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

SEC. 675. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
676. Form of the summons.
677. When and how served.
678. Examination of the charge.
679. Certificate of the magistrate, and return thereof with the depositions.
680. Grand jury may proceed as in the case of a natural person.
681. Bringing an indicted corporation into court.
682. Fine, on conviction, how collected.

§ 675. Summons upon an information or presentment against a corporation, etc.—Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

See People *v.* Gas-light Co. 6 N. Y. Cr. 191.

§ 676. Form of the summons.—The summons must be in substantially the following form:

"County of *Albany*, [or as the case may be.]

"In the name of the people of the state of New York:

"To the [naming the corporation.]

"You are hereby summoned to appear before me, at [naming the place,] on [specifying the day and hour,] to answer a charge made against you, upon *the information of A. B.*, for [designating the offense, generally.]

"Dated at the *city*, [or "town,"] of , the day of , 18 .

G. H., *Justice of the peace.*"
[or as the case may be.]

See People *v.* Gas-light Co. 6 N. Y. Cr. 191.

§ 677. **When and how served.**—The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

See People *v.* Gas-light Co. 6 N. Y. Cr. 191.

§ 678. **Examination of the charge.**—At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

See People *v.* Gas-light Co. 6 N. Y. Cr. 191.

§ 679. **Certificate of the magistrate, and return, etc.**—After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section 221.

See People *v.* Gas-light Co. 6 N. Y. Cr. 191.

§ 680. **Grand jury may proceed as in the case of a natural person.**— If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

People *v.* Gas-light Co 6 N Y. Cr. 193.

§ 681. **Bringing an indicted corporation into court** — When an indictment is filed against any corporation, such corporation must be arraigned thereon, and the court acquires jurisdiction over the corporation, in the manner following:

1. The clerk of the court wherein such indictment is found, or to which it is sent or removed, or the district attorney of the county, must issue a summons signed by him with his name of office, requiring such corporation to appear and answer the indictment by a

demurrer or written plea to be verified in like manner as a pleading in a civil action, at a time and place to be specified in such summons, such time to be not less than five days after the issue thereof. The summons may be substantially in the following form:

Court of oyer and terminer of the county of , (state the proper county or court as the case may be)

The People of the State of New York

vs.

The A. B. Company.

You are hereby summoned to appear in this court and, by demurrer or plea in writing duly verified, answer an indictment filed against you by the grand jury of this county, on the day of , charging you with the crime of (designating the offense generally), at a term of the court of oyer and terminer (or as the cause may be) of this county, at (naming the place) on (stating the day and hour), and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of , the day of 18 .

C. D.

District Attorney.

(or by order of the court, E. F. Clerk, as the case may be).

2. The summons must be served at least four days before the appearance fixed therein, in the same manner as is provided for the service of a summons upon a corporation in a civil action; and if the corporation does not appear in the manner and at the time and place specified in the summons, judgment must be pronounced against it.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to answer an indictment, without the issuance or service of the summons as above provided. And when an indictment shall have been filed against a corporation it may voluntarily appear and answer the same by counsel duly authorized to so appear for it; in which case the court acquires full jurisdiction over the corporation in the same manner as if the summons had been issued and served. [AM'D, CH. 219 OF 1892. IN EFFECT SEPT. 1, 1892.]

People v. Gas-light Co. 6 N. Y. Cr. 198.

§ 682. **Fine, on conviction, how collected.** — When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER X.

ENTITLING AFFIDAVITS.

SEC. 683. Affidavits defectively entitled, valid.

§ 683. Affidavits defectively entitled, valid.—It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose, as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or appeal in which it is made.

CHAPTER XI.

ERRORS AND MISTAKES, IN PLEADINGS AND OTHER PROCEEDINGS.

SEC. 684. Errors, etc., when not material.

§ 684. Errors, etc., when not material.—Neither a departure from the form or mode prescribed by this Code, in respect to any pleadings or proceedings, nor an error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice, in respect to a substantial right.

See §§ 285, 542, *ante*. People *v.* Holmes, 41 Hun, 55; 5 N. Y. Cr. 131; People *v.* Courtney, 1 Id. 557; Tillotson *v.* Marshall, 40 Hun, 322; People *v.* Williams, 18 N. Y. St. Rep. 405; People *v.* Dimick, 107 N. Y. 13, 34; People ex rel. Pickard *v.* Sheriff, etc., 11 Civ. Pro. 186; People *v.* Willett, 27 Hun, 469; People *v.* Otto, 4 N. Y. Cr. 149; People *v* Menken, 3 Id. 238; 36 Hun, 95; Schrumpf *v.* People, 14 Id. 13; People *v.* Chacon, 4 N. Y. Cr. 173; 1 Sil. (Ct. App.), 38; People *v.* Hagan, 37 N. Y. St. Rep. 661; People *v.* Gillman, 125 N. Y. 372; People *v.* Tower, 42 N. Y. St. Rep. 164, 166.

CHAPTER XII.

DISPOSAL OF PROPERTY, STOLEN OR EMBEZZLED.

SEC. 685. When property, alleged to be stolen or embezzled, comes into custody of peace officer.
686. Order for its delivery to owner.
687. When it comes into custody of magistrate, he must deliver it to owner, on proof of title and payment of expenses.
688. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.
689. If not claimed in six months, to be delivered to county superintendent of the poor, or in New York, to commissioners of charities and corrections.
690. Receipt for money or property taken from a person arrested for a public offense.
691. Duties of police clerks in the city of New York, etc.

§ 685. When property, etc., stolen or embezzled comes into custody of peace officer.—When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it, subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Simpson *v.* St. John, 93 N. Y. 365.

§ 686. Order for its delivery to owner.— On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, unless its temporary retention be deemed necessary in furtherance of justice, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Simpson *v.* St. John, 93 N. Y. 365; Houghton *v.* Backman, 47 Barb. 388.

§ 687. When it comes into custody of magistrate he must deliver property to owner, on proof of title and payment of expenses.— If property stolen or embezzled come into the custody of a magistrate, it must, unless its temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Simpson *v.* St. John, 93 N. Y. 365; Houghton *v.* Bachman, 47 Barb. 393.

§ 688. Court in which trial is had, etc., may order such delivery to owner.— If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

§ 689. If not claimed in six months, to be delivered, etc.—If property stolen or embezzled be not claimed by the owner, before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in his custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county superintendents of the poor, or in the city of New York, to the commissioners of charities and corrections, to be applied for the benefit of the poor of the county or city, as the case may be.

§ 690. Receipt for money or property, taken from a person arrested, etc.— Except in the city of New York, when money or other property is taken from a defendant, arrested upon a charge of a crime, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendent, and the other of which he must forthwith file with the clerk of the court to which the depositions and statement must be sent, as provided in section 221.

§ 691. Duties of police clerks in the city of New York, etc.—The commissioners of police of the city of New York may designate some person to take charge of all property alleged to be stolen or embezzled, and which may be brought into the police office, and all property taken from the person of a prisoner, and may prescribe regulations in regard to the duties of the clerk or clerks so designated, and to require and take security for the faithful performance of the duties imposed by this section, and it shall be the duty of every officer into whose possession such property may come, to deliver the same forthwith to the person so designated.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS AND PARDONS.

SEC. 692. Power of governor to grant reprieves, commutations and pardons.
693. His power in respect to convictions for treason. Duty of the legislature, in such cases.
694. Governor to communicate annually to legislature, reprieves, commutations and pardons.
695. Report of case, how, and from whom required.
696. }
697. } Repealed.
698. }

§ 692. Power of governor to grant reprives, commutations and pardons.—The governor has power to grant reprives, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided in this chapter.

Pardon does not bar other proceedings. Anon, 86 N. Y. 563; People *v.* Potter, 1 Park. 47; People *v.* Pease, 3 John. Cas. 333; In re Edymion, 8 How. 478; Arthur *v.* Craig, 48 Iowa, 264; 30 Am. Rep. 395; State *v.* Foley, 15 Nev. 64; 37 Am. Rep. 458; State *v.* Alexander, 76 N. C. 231; 22 Am. Rep. 675.

§ 693. His power in respect to convictions for treason; duty of the legislature, in such cases.—He may also suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the legislature, at its next meeting, when the legislature must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

§ 694. Governor to communicate annually to legislature, etc.—He must annually communicate to the legislature, each case of reprieve, commutation or pardon; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

§ 695. **Report of case, how and from whom required.**— When application is made to the governor for a pardon, *commutation or reprieve, it shall be the duty of* the presiding judge of the court before which the conviction was had, and the district attorney by whom the criminal action was prosecuted, *or the district attorney of the county where the conviction was had, holding office at the time of such application, to supply the governor, upon his request therefor, and* without delay, with a statement of the facts proved on the trial; *or, if a trial was not had, the facts appearing before the grand jury which found the indictment,* and of any other facts having reference to the propriety of granting or refusing such pardon, *commutation or reprieve.* [AM'D CH. 356 OF 1884.]

§ 696. Repealed.

§ 697. Repealed.

§ 698. Repealed.

PART V.

OF PROCEEDINGS IN COURTS OF SPECIAL SESSIONS AND POLICE COURTS.

TITLE I. OF THE PROCEEDINGS IN COURTS OF SPECIAL SESSIONS IN THE COUNTIES OTHER THAN NEW YORK.

II. OF THE PROCEEDINGS IN THE COURTS OF SPECIAL SESSIONS IN THE CITY AND COUNTY OF NEW YORK.

III. OF APPEALS FROM THE COURTS OF SPECIAL SESSIONS.

TITLE I.

Of Proceedings in Courts of Special Sessions in the Counties other than New York.

SEC. 699. Charge to be read to defendant, and he required to plead.
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See People v. Hulett, 39 N. Y. St. Rep. 648.

§ 699. Charge to be read to defendant, and he required to plead.— In the cases in which the courts of special sessions or police courts have jurisdiction, when the defendant is brought before the magistrate, the charge against him must be distinctly read to him, and he must be required to plead thereto.

People ex rel. Baker v. Beatty, 39 Hun, 477; 4 N. Y. Cr. 288; Fraser v. Board, etc. 17 N. Y. St. Rep. 875; People v. Cook, 45 Hun, 36.

§ 700. The plea, and how put in.— The defendant may plead the same pleas as upon an indictment, as provided in section 332. His plea must be oral, and entered upon the minutes of the court.

People ex rel. Baker v Beatty, 39 Hun, 477; 4 N. Y. Cr. 288.

§ 701. Issue, how tried.— Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the court must proceed to try the issue.

Infant may waive jury trial. People ex rel. Sammons v. Wandell, 21 Hun, 515. People v. Cook, 45 id. 37; People v. Green, 4 N. Y. Cr. 443; Gill v. People, 3 Hun, 187; 5 T. & C. 308; People v. Goodwin, 5 Wend. 251; People v. Mallon, 39 How. 454; People v Berberick, 20 Barb. 224; 11 How. 287; Wynehamer v. People, 13 N. Y. 378; People ex rel. Murray v. Justices, 74 id. 406.

§ 702. Defendant may demand a trial by jury.— Before the court hears any testimony upon the trial, the defendant may demand a trial by jury.

People v. James, 16 Hun, 426; People v. Green, 4 N. Y. Cr. 443; People v. Cook, 45 Hun, 37; People v. Baird, 11 id. 289; People v. Leid, 19 A. L. J. 400; People v. Mallon, 39 How. 454; People v. Berberrich, 20 Barb. 224, 11 How. 289.

§ 703. Jury; how summoned.— If a trial by jury be demanded the court shall issue an order directed to any constable of the county or marshal of the city where the offense is to be tried and having authority to execute process from the court, commanding him to summon twelve good and lawful men, qualified to serve as jurors, and not exempt from such service by law, and who shall be in no wise of kin, either to the complainant or the defendant, to appear before such court, at a time not more than three days from the date of the order, and at a place to be named therein, to make a jury for the trial of such offense.

People *v.* Green, 4 N. Y. Cr. 443; People *v.* Cook, 45 Hun, 37; People *v.* Hulett, 39 N. Y. St. Rep. 648.

§ 704. Summoning the jury, and returning the list.— The officer to whom such order shall be delivered shall execute the same fairly and impartially, and shall not summon any person whom he shall suspect to be biased or prejudiced for or against the defendant. He shall summon the jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the order and return with it to the court.

§ 705. Depositing ballots in box.— The names of the persons returned as jurors must be written on separate ballots, folded as nearly alike as possible, so that the name can not be seen, and must, under the direction of the court, be deposited in a box, or other convenient thing.

People *v.* Hulett, 39 N. Y. St. Rep. 648.

§ 706. Drawing the jury.— The court must then draw out six of the ballots, successively; and if any of the persons whose names are drawn do not appear, or are challenged and set aside, such further number must be drawn as will make a jury of six, after all legal challenges have been allowed.

See People ex. rel. Eckler *v.* Clark., 23 Hun, 374; People ex. rel. Murray *v.* Justices, etc. 74 N. Y. 406; People ex. rel. Met. Bd. etc. *v.* Lane, 6 Abb. (N. S.) 105; Duffy *v.* People, 6 Hill, 75; Devine *v.* People, 20 Hun, 98; People *v.* Dutcher, ib. 241; Vanderwerker *v.* People, 5 Wend. 530; Germond *v.* People, 1 Hill, 343; Dawson *v.* Horan, 51 Barb. 459; People *v.* Hulett, 39 N. Y. St. Rep. 648.

§ 707. Challenges.— The same challenges may be taken by either party, to the panel of jurors, or to an individual juror, as on the trial of an indictment for a misdemeanor, so far as applicable; and the challenge must, in all cases, be tried by the court.

§ 708. Talesmen, when and how ordered and summoned.— If six of the jurors summoned do not attend, or be not obtained, the court

may direct the officer to summon any of the bystanders, or others, who may be competent, and against whom there is no sufficient cause of challenge, to act as jurors.

People *v.* Hulett, 39 N. Y. St. Rep. 648.

§ 709. **Punishing officer for not returning list, and issuing new order for jury.**— If the officer to whom the order is delivered do not return it, as required by section 704, he may be punished by the court, as for contempt; and the court must issue a new order for the summoning of jurors, in substantially the same form; upon which the same proceedings must be had as upon the one first issued.

People *v.* Hulett, 39 N. Y. St. Rep. 648.

§ 710. **Jury, how constituted.**— When six jurors appear and are accepted, they constitute a jury.

See cases cited under section 706, *ante*.

§ 711. **Their oath.**—The court must thereupon administer to the jury the following oath or affirmation: "You do "swear," [or "you do solemnly affirm," as the case may be,] "that you will well and truly try this issue, between the people of the state of New York and A. B., the defendant, and a true verdict give, according to the evidence."

§ 712. **Trial, how conducted.**—After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

§ 713. **Jury may decide in court, or retire. Oath of officer, etc.**—After hearing the proofs and allegations, the jury may either decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear, that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

§ 714. **Delivering verdict, and entry thereof.**—When the jury have agreed on their verdict, they must deliver it publicly to the court, which must enter it in its minutes.

Thomas *v.* People, 19 Wend. 480; Powers *v.* People, 4 John. 292

§ 715. Discharge of jury without verdict.—The jury can not be discharged, after the cause is submitted to them, until they have agreed upon, and rendered their verdict unless, for some cause within the meaning of sections 428 and 429, the court sooner discharge them.

Lattimore *v.* People, 10 How. 336; Vanderwerker *v.* People, 5 Wend. 530.

§ 716. In such case, cause to be retried.—If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict is rendered.

§ 717. Judgment on conviction.—When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon, of fine or imprisonment, or both, as the case may require; but the fine can not exceed fifty dollars, nor the imprisonment six months.

See § 719, *post*; 2 N. Y. Cr. 313; id. 438; People ex rel. Stokes *v.* Riseley, 38 Hun, 280; 4 N. Y. Cr. 109; People *v.* Palmer, 43 Hun, 408; 109 N. Y. 413; People ex rel. Evans *v.* McEwen, 2 N. Y. Cr. 313; 67 How. 105; People ex rel. Devoe *v.* Kelly, 32 Hun, 536; 2 N. Y. Cr. 429; 97 N. Y. 212; 3 N. Y. Cr. 414; Lattimore *v.* People 10 How. 336; People *v* Rawson, 61 Barb. 619; Matter of Hallenbeck, 1 N. Y. Cr. 437; 65 How 401; People *v.* Carter, 48 Hun, 167; 14 Civ. Pro. 245; People *v* Bork, 96 N. Y. 188–200; People ex rel. Tweed *v* Liscomb, 60 id. 559; People *v.* Nash, 12 W. Dig. 545; People ex rel. Knowlton *v.* Sadler, 2 N. Y. Cr. 438; People ex rel. Cook *v.* Smith, 28 N. Y. St. Rep. 306; Matter of Bray, 34 id. 642; People *v.* Henschel, 35 id. 276; Burns *v.* Norton, id. 418.

§ 718. Judgment of imprisonment, until fine be paid. Extent of imprisonment—A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied; specifying the extent of the imprisonment, which can not exceed one day for every one dollar of the fine.

See § 484 *ante*; People ex rel. Stokes *v.* Riseley, 38 Hun, 281; 4 N. Y. Cr. 110; People *v.* Norton, 33 Hun, 277; 2 N. Y. Cr. 324; People *v.* Sutton, 2 Sil. (S. C.), 575; Matter of Hoffman, 1 N. Y. Cr. 484; Matter of Bray, 34 N. Y. St. Rep. 643; People ex rel. Sherer *v.* Walsh, 2 N. Y. Cr. 325.

§ 719. Defendant, on acquittal, to be discharged. Order that prosecutor pay the costs.—When the defendant is acquitted, either by the court or by a jury, he must be immediately discharged; and if the court certify, upon its minutes, or the jury find that the prosecution was malicious or without probable cause, the court must order the prosecutor to pay the costs of the proceedings, or to give satisfactory security, by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

No appeal from order imposing costs. People *v.* Norton, 33 Hun, 277; 2 N.Y. Cr. 324; People *v.* Carr, 54 Hun, 445.

§ 720. Judgment against prosecutor for costs.— If the prosecutor do not pay the costs or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced and *appealed from*, in all respects, in the same manner as a judgment rendered by a justice court held by a justice of the peace. [AM'D CH. 186 OF 1890; IN EFFECT SEPT. 1, 1890.]

Germond *v.* People, 1 Hill, 343; People *v.* Norton, 33 Hun, 277; 2 N. Y. Cr. 322; People *v.* Carr, 54 Hun, 445.

§ 721. Certificate of conviction. Its form.— When a conviction is had, upon a plea of guilty or upon a trial, the court must make and sign a certificate in substantially the following form:

"Court of Special Sessions, or Police Court,

"County of *Albany*. Town of *Berne* [or as the case may be

"The People of the state of New York
against
A. B.

January 1, 18 .

"The above-named A. B., having been brought before C. D., justice of special sessions, justice of the peace [or other magistrate, as the case may be] or police justice, of the town [or city or village] of [as the case may be] charged with [briefly designating the offense], and having thereupon pleaded guilty or not guilty [or as the case may be], and demanded [or "failed to demand," as the case may be,] a jury, and having been thereupon duly tried, and upon such trial, duly convicted.

It is adjudged that he be imprisoned in the jail of this county days [or "pay a fine of dollars and be imprisoned until it be paid, not exceeding days," or both, as the case may be.]

"Dated at the *town* [or "city"] of , the day of , 18 .

C. D.,
Justice of the peace or police justice or other magistrate [as the case may be] of the town or "city"] of, the " [as the case may be.]

People ex rel. Van Houton *v.* Sadler, 97 N. Y. 146; People ex rel. Evans *v.* McEwen, 2 N. Y. Cr. 313; 67 How. 105; People *v.* Neilson, 16 Hun, 214; People *v.* Holmes, 41 id. 55; People *v.* Mallon, 39 How 454; Matter of Travis, 55 id. 347; 9 Abb. N. C. 70; People *v.* Moore, 3 Park. 465; Matter of Hogan, 55 How. 458; Matter of Sweetman, 1 Cow. 144; Murphy *v.* People, 2 id. 815; Thomas *v.* People, 19 Wend. 480; Lattimore *v.* People, 10 How. 336; Matter of Lynch, 9 Abb N. C. 70; People ex rel. Stokes *v.* Riseley, 38 Hun, 280; 4 N. Y. Cr. 109; People ex rel. Baker *v.* Beatty, 39 Hun, 477; People ex rel. Loughlin *v.* Finn, 87 N. Y. 533; Matter of Hoffman, 1 N. Y. Cr. 484; Davidsburgh *v.* Knickerbocker L. Ins. Co. 90 N. Y. 526; People ex rel. Cook *v.* Smith, 28 N.Y. St. Rep. 307; People ex rel. McGrath *v.* Board, etc. 119 N. Y. 130.

§ 722. Id.— If the defendant have pleaded guilty,— instead of the second paragraph, the certificate must state substantially as

follows: "And the above-named A. B. having been thereupon duly convicted, upon a plea of guilty."

People ex rel. Evans v. McEwen, 2 N. Y. Cr. 313; 67 How. 113.

§ 723. Certificate, when filed.— Within twenty days after the conviction, the court must cause the certificate to be filed in the office of the clerk of the county.

People ex rel. Slatzkata v. Baker, 19 N. Y. St. Rep. 487; People v. Holmes, 41 Hun, 56; 5 N. Y. Cr. 130.

§ 724. Certificate, conclusive evidence.— The certificate, made and filed as prescribed in the last two sections, or a certified copy thereof, is conclusive evidence of the facts stated therein.

Form. Ex parte Morris, 2 Ed. S. C. 381; People ex rel. Evans v. McEwen, 2 N. Y. Cr. 312; 67 How. 113; Matter of Nichols, 19 Abb. N. C. 138; People ex rel. Slatzkata v Baker, 19 N. Y. St. Rep. 487.

§ 725. Judgment, by whom executed.— The judgment must be executed by the sheriff of the county, or by a constable, marshal or policeman of the city, village or town in which the conviction is had, upon receiving a copy of the certificate prescribed in section 721, certified by the court or the county clerk.

People ex rel. Evans v. McEwen, 2 N. Y. Cr. 312; 67 How. 113; Matter of Nichols, 19 Abb. N. C. 138; People v. Holmes, 41 Hun, 56; 5 N. Y. Cr. 130; People ex rel. McGrath v. Board, etc. 119 N. Y. 130.

§ 726. Fine, by whom received before commitment and how applied.— If a fine imposed be paid before commitment, it must be received by the court, and within thirty days after its receipt paid by such court into the county treasury. [AM'D CH. 392 OF 1884.]

People ex rel. Fraser v. Board, etc. 17 N. Y. St. Rep. 875.

§ 727. Fine, to whom paid after commitment, etc.— If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person; who must in like manner, within thirty days after the receipt thereof, pay it into the county treasury.

People ex rel. Fraser v. Board, etc. 17 N. Y. St. Rep. 875.

§ 728. Proceedings against magistrate or sheriff on neglect to pay fine into the county treasury.—If the court or sheriff receiving the fine, fail to pay it into the county treasury, the county treasurer must immediately commence an action *therefor* against the sheriff or the magistrates *comprising* the court, in the name of the county. [AM'D CH. 392 OF 1884.]

§ 729. Subpœnas for witnesses, and punishing them for their disobedience.—The court may issue subpœnas for witnesses, as provided in section 608, and punish disobedience thereof, as provided in section 619.

§ 730. Punishing jurors for non-attendance.—If a person summoned as a juror fail to appear, he may be punished by a fine not exceeding five dollars imposed by the court, by an order entered in his minutes. The order is deemed a judgment, in all respects, in favor of the poor of the town or city.

§ 731. No fees to jurors or witnesses.—No fees are payable to a juror or witness, for his service or attendance in a court of special sessions.

See §§ 494, 616, *ante*.

§ 732. When defendant requests a trial by police court, preliminary examination dispensed with.—When the defendant, upon being brought before the magistrate, requests a trial by a court of special sessions, the preliminary examination of the case is dispensed with.

§ 733. During time allowed for bail, and until judgment, defendant to be continued in custody of officer or committed to jail.—During the time allowed to the defendant to give bail, and until judgment is given, he may be continued in the custody of the officer, or committed to the jail of the county to answer the charge, as the magistrate may direct.

§ 734. Form of commitment.—The commitment must be signed by the magistrate, by his name of office, and must be in substantially the following form:

"The sheriff of the county of , is required to receive and detain A. B., who stands charged before me for [designating the offense, generally], to answer the charge before a court of special sessions in the town [or city] of [as the case may be].

"Dated at the town [or city of , the day of , 18 .

"C. D., justice of the peace of the town [or city] of ," [as the case may be].

See cases under § 721, *ante*. People ex rel. Loughlin v. Finn, 87 N. Y. 533.

§ 735. By whom executed.—When committed, the defendant [illegible] delivered to the custody of the proper officer, by any peace

officer in the county to whom the magistrate may deliver the commitment.

§ 736. **Defendant may be admitted to bail.**— Either before or after his committal, or upon being committed, the defendant must, if he require it, be admitted to bail.

§ 737. **Bail, how and by whom taken.**— The bail must be taken by the magistrate, by a written undertaking, executed by the defendant, with one or more sufficient sureties approved by the magistrate, in a sum not exceeding two hundred dollars.

§ 738. **Form of the undertaking.**— The undertaking must be in substantially the following form:

"A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of [as the case may be], with the offense of [designating the offense generally].

"We undertake jointly and severally, that he shall appear thereon from time to time, until judgment, at a court of special sessions in the town or village [or city] of [as the case may be] competent to try the case, or that we will pay to the county of [naming the county in which the court is held], the sum of dollars," [inserting the sum fixed by the magistrate.]

"Dated at the town [or city] of ," [as the case may be].

§ 739. **Undertaking, when forfeited, and action thereon.**— If the defendant fail to appear according to the undertaking, the court, unless a sufficient excuse be shown, must declare the undertaking of bail forfeited, and the county treasurer must immediately commence an action for the recovery of the sum mentioned therein, in the name of the county.

§ 740. **Forfeiture, how and by whom remitted.**— The county court of the county, or in the city of New York, the court of common pleas of that city, may remit the forfeiture or any part thereof, in the cases and in the manner provided in the Code of Civil Procedure.

Code Civ. Proc. §§ 350-353, 286, 294.

TITLE II.

Of the Proceedings in the Court of Special Sessions in the City and County of New York.

SEC. 741. Police courts in New York, to proceed as prescribed in last title, except as provided in next seven sections.
742. In what cases to proceed to trial.
743. If jury demanded, magistrate to proceed to examination of charge.
744. Trial to be before the court without a jury.
745. Clerk to issue subpœnas sign certificate of judgment, and enter proceedings of court and sentences upon convictions.
746. Fines before committal, to be paid to clerk. His accounts when and to whom rendered.
747. All other fines to be paid to sheriff. His account thereof, when and to whom rendered.
748. No transcript of conviction to be filed. Certified copy of minutes, conclusive evidence.

§ 741. Police courts in New York, etc.— The court of special sessions, in the city and county of New York, must proceed upon a criminal charge in the manner prescribed in the last title, except as provided in the next seven sections, and by special statutes.

People ex rel. Fraser *v.* Board, etc. 17 N. Y. St. Rep. 875; People ex rel. Murray *v.* Justices, 74 N. Y. 406.

§ 742. In what cases to proceed to trial.— When the court of special sessions in the city and county of New York has jurisdiction, it must proceed to the trial, in the following cases:

1. When the defendant has requested to be tried in such court;

2. When (having omitted for twenty-four hours to give bail, as required by the magistrate before whom he was brought, for his appearance at the next court of general sessions of the city and county of New York) a jury is not demanded by him, on being brought before the court of special sessions for trial.

§ 743. If jury demanded, magistrate to proceed to examination of charge.— If, in the case mentioned in the second subdivision of the last section, a jury be demanded, the court of special sessions must proceed to the examination of the charge, and hold the defendant to answer or discharge him in same manner as the magistrate before whom he was originally brought might have done.

§ 744. Trial to be before court, without a jury.— The trial must, in all cases, be before the court without a jury.

§ 745. Clerk to issue subpœnas, etc.— Subpœnas for witnesses, and the certificate of the judgment, must be signed by the clerk of the court, who must also enter all the proceedings of the court, and the sentences upon convictions, in a book of minutes, and when necessary, certify the proceedings of the court.

§ 746. Fines before committal, etc.— Fines, imposed by the court must be received by the clerk, if paid before committal in execution of the judgment. He must, every thirty days, render to the comptroller of the city, accounts of the fines imposed and received by him, and of the expenses attending the court.

§ 747. All other fines to be paid to sheriff, etc.— All fines, not paid to the clerk, as provided in the last section, must be received by the sheriff of the city and county of New York; who must within thirty days thereafter, pay them to the comptroller of the city, in the same manner as he is required to pay fines imposed by the court of general sessions of the city and county of New York, and received by him.

§ 748. No transcript of conviction to be filed, certified copy of minutes, conclusive evidence.— No transcript of a conviction, had in a court of special sessions in the city and county of New York, need be certified or filed; but a copy of the minutes of the conviction, certified by the clerk, is conclusive evidence of the facts contained therein.

TITLE III.

Of Appeals from Courts of Special Sessions.

SEC. 749. Review on appeal from minor courts.
750. Appeal, for what causes allowed.
751. Appeal, how taken.
752. How allowed.
753. Release on bail pending an appeal.
754. Undertaking, when and with whom filed.
755. Delivery of affidavit, and allowance of appeal, to magistrate or clerk of police court, within five days after allowance.
756. Return, when and how made.
757. Compelling return.
758. Ordering and compelling further or amended return.
759 Appeal, by whom and how brought to argument.
760. If not brought to argument, as provided in last section, to be dismissed, unless continued for cause shown.
761. Service of return on district attorney, and consequences of failure.
762. If brought to hearing by defendant, appeal must be argued, though no one oppose, etc.
763. Appeal to be heard on original return.
764. What judgment may be rendered.
765. Judgment to be entered on the minutes.
766. Order upon judgment for affirmance.
767. Order upon judgment of reversal.
768. If new trial ordered, to be had in court of sessions. Proceedings thereon.
769. Proceedings to carry judgment upon appeal into effect, to be had in court of sessions.
770. On judgment of court of sessions, defendant may appeal to supreme court. His admission to bail.
771. Judgment of supreme court upon appeal, final.
772. Proceedings to carry into effect judgment of supreme court.

§ 749. **Review on appeal from minor courts.**— A judgment upon conviction, rendered by a court of special sessions, police court, police magistrate, or justice of the peace, in any criminal action or proceedings or special proceeding of a criminal nature, *including a judgment of commitment made under section two hundred and ninety-one of the Penal Code*, may be reviewed by the court of sessions of the county, upon an appeal as prescribed by this title, and not otherwise; and any appeals heretofore taken and allowed from a judgment of any police court or police magistrate in the manner that appeals are directed to be taken and allowed by this title, and now pending undetermined in any court of this state, are hereby declared to be legal and valid and of the same force and effect as if taken after the passage of this act. *An appeal from a judgment of commitment made under section two hundred and ninety-one of the Penal Code may be allowed to any person having, previous to such commitment, a right to the custody of the child; but upon such appeal, in addition to the notice and papers required by this title to be served on appeals in criminal actions, notice of all proceedings and copies of the affidavit and allowance of appeal therein must be served upon the institution named in the commitment, and upon the society mentioned in section two hundred and ninety-three of the Penal Code, if there be one within the county. Such institution and society, or either, shall have the right to move to argue or dismiss, and to be heard upon the argument of such appeal; and shall have the like right to appeal from the judgment of the court of sessions of the county to the supreme court as is conferred by section seven hundred and seventy of this Code upon a defendant, and to the court of appeals by section five hundred and nineteen of this Code; and pending any appeal and until the final determination thereof the child named in the commitment must remain in the custody of the institution therein specified.* [AM'D CH. 372 OF 1884 AND CH. 39 OF 1890.]

People *v.* Trumble, 1 N. Y. Cr. 443; 29 Hun, 205; People *v.* Norton, 33 id. 277; 2 N. Y. Cr. 322; Killoran *v.* Barton, 26 Hun, 649; People ex rel. Scherer *v.* Walsh, 33 id. 345; 2 N. Y. Cr. 325; 67 How. 432; People *v.* Bauer, 3 N. Y. Cr. 433; People ex rel. Wright *v.* Court, etc. 45 Hun, 55; People *v.* Vitan, 20 Abb. N. C. 298; People *v.* Carr, 54 Hun, 444.

§ 750. **Appeal, for what causes allowed.**— An appeal may be allowed for an erroneous decision or determination of law or fact upon the trial.

§ 751. **Appeal, how taken.**— For the purpose of appealing, the defendant, or some one on his behalf, must within ten days after the judgment, *or within twenty days after the commitment where the appeal is from the latter*, make an affidavit stating the fact show-

ing the alleged errors in the proceedings or conviction *or commitment* complained of, and must within that time present it to the county judge or a *justice* of the supreme court, or in the city and county of New York, to the recorder or a judge authorized to hold a court of general sessions in that city, and may apply thereon for the allowance of the appeal. [AM'D CH. 39 OF 1890.]

People ex rel. Baker v. Beatty, 39 Hun, 476; 4 N. Y. Cr. 287; People v. McGann, 43 Hun, 57.

§ 752. **How allowed.**— If, in the opinion of the judge, it is proper that the question arising on the appeal should be decided by the court of sessions, he must indorse on the affidavit an allowance of the appeal to that court.

People ex rel. Baker v. Beatty, 39 Hun, 477; 4 N. Y. Cr. 287.

§ 753. **Release on bail pending an appeal.**— Upon allowing the appeal, if satisfied that there is a reasonable doubt whether the conviction should stand, but not otherwise, the judge may take from the defendant, a written undertaking, with such sureties as he may approve, that the defendant will abide the judgment of the court of sessions upon the appeal, and may thereupon order that he be discharged from imprisonment, on service of the order upon the officer having him in custody, or if he be not in custody, that all proceedings on the judgment be stayed. [AM'D CH. 279 OF 1892. IN EFFECT SEPT. 1, 1892.]

§ 754. **Undertaking, when and with whom filed.**—The undertaking upon the appeal must be immediately filed with the clerk of the court of sessions.

§ 755. **Delivery of affidavit, etc.**—The affidavit and allowance of the appeal must be delivered to the magistrate, or clerk of the court *rendering the judgment*, within five days after the allowance of the appeal, and when so delivered the appeal is deemed taken. [AM'D CH. 39 OF 1890.]

§ 756. **Return, when and how made.**—The magistrate or court rendering the judgment, must make a return to all the matters stated in the affidavit, and must cause the affidavit and return to be filed in the office of the clerk of the court of sessions, within ten days after the service of the affidavit and allowance of the appeal.

People v. McGann, 43 Hun, 57.

§ 757. **Compelling return.**—If the return be not made within the time prescribed in the last section, the court of sessions, or the pre-

siding judge thereof, may order that a return be made within a specified time which may be deemed reasonable; and the court may, by attachment, compel a compliance with the order.

§ 758. **Ordering, etc., amended return.**—If the return be defective, a further or amended return may be ordered, and the order may be enforced in the manner provided in the last section.

People v. Carnrick, 39 N. Y. St. Rep. 596.

§ 759. **Appeal, by whom and how brought to argument.**—When the return is made, the appeal may be brought to argument by the defendant, on any day in term, upon a notice of not less than five days before the term, to the district attorney of the county.

§ 760. **If not brought to argument, etc., to be dismissed, unless continued, etc.**—If the defendant omit to bring the appeal to argument, as provided in the last section, the court must dismiss it, unless it continue the same, by special order, for cause shown.

§ 761. **Service of return on district attorney, and consequences of failure.**—The defendant must serve upon the district attorney, a copy of the return, with or before the notice of argument. If he fail to do so, the appeal must be dismissed, upon proof of the failure, unless the court otherwise direct.

§ 762. **If brought to hearing by defendant, appeal must be argued, though no one opposes, etc.**—If the appeal be brought to hearing by the defendant, it must be argued, though no one appear to oppose; but if brought on by the district attorney, he may take judgment of affirmance, unless the defendant appear to argue the appeal.

§ 763. **Appeal to be heard on original return.**—The appeal must be heard upon the original return; and no copy thereof need be furnished for the use of the court.

§ 764 **What judgment may be rendered.**—After hearing the appeal, the court must give judgment, without regard to technical errors or defects, which have not prejudiced the substantial rights of the defendants, and may render the judgment which the court below should have rendered, or may, according to the justice of the case, affirm or reverse the judgment in whole or in part, as to all or any of the defendants, if there be more than one, or may order a new trial, or may modify the sentence.

People v. Cutler, 28 Hun, 465; 1 N. Y. Cr. 178; People ex. rel. Stokes v. Risley, 38 Hun, 283; 2 N. Y. Cr. 111; People v. McIntosh, 5 Id. 41; People v. Moore,

50 Hun, 359; People *v.* Starks, 17 N. Y. Rep. 237; People *v.* Upton, 29 id. 779; People *v.* Clark, 62 Hun, 84.

§ 765. **Judgment to be entered on the minutes.**— When judgment is given upon the appeal, it must be entered upon the minutes.

§ 766. **Order upon judgment for affirmance.**—If the judgment be affirmed, the court must direct its execution, and if the defendant have been discharged on bail, after the commencement of the execution of a judgment of imprisonment, must commit him to the proper custody for the remainder of his term of imprisonment.

§ 767. **Order upon judgment of reversal.**—If the judgment be reversed, and the defendant be imprisoned in pursuance of the judgment of the police court, the court of sessions must order him to be discharged.

People *v.* Trumble, 1 N. Y. Cr. 446.

§ 768. **If new trial ordered, to be had in court of sessions, etc.**— If a new trial be ordered, it must be had in the court of sessions, in the same manner as upon an issue of fact on an indictment; and that court may proceed to judgment and execution, as in an action prosecuted by indictment. *But where the appeal was from a judgment of commitment made under section two hundred and ninety-one of the Penal Code, the new trial shall be had before the court of sessions without a jury.* [AM'D CH 39 OF 1890.]

§ 769. **Proceedings to carry judgment upon appeal into effect, to be had in court of sessions.**—If any proceedings be necessary to carry the judgment upon the appeal into effect, they must be had in the court of sessions.

§ 770. **On judgment of court of sessions, defendant may appeal to supreme court, etc.**—If the judgment on the appeal be against the defendant, he may appeal therefrom to the supreme court, in the same manner as from a judgment in an action prosecuted by indictment, and may be admitted to bail upon the appeal, in like manner.

People *v* Trumble, 1 N. Y. Cr. 446; People *v.* Snyder, 44 Hun, 193; People ex rel. Wright *v.* Court, etc. 45 id. 55.

§ 771. **Judgment of supreme court upon appeal, final.**— The judgment of the supreme court upon the appeal is final; *except that where the original appeal was from a judgment of commitment of a child, either party may appeal to the court of appeals in like manner as a*

defendant under section five hundred and nineteen of this Code. [AM'D CH. 39 OF 1890.]

People v. Snyder, 44 Hun, 193; People ex rel. Wright v. Court, etc. 45 id. 55.

§ 772. **Proceedings to carry into effect judgment of supreme court.**— The same proceedings must be had, to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken upon a judgment in an action prosecuted by indictment.

People v. Clark, 62 Hun, 84; see 4 N. Y. Cr. 289.

PART VI.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I. OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.
II. OF SEARCH WARRANTS.
III. OF THE OUTLAWRY OF PERSONS CONVICTED OF TREASON.
IV. OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.
V. OF PROCEEDINGS RESPECTING BASTARDS.
VI. OF PROCEEDINGS RESPECTING VAGRANTS.
VII. OF PROCEEDINGS RESPECTING DISORDERLY PERSONS.
VIII. OF PROCEEDINGS RESPECTING THE SUPPORT OF POOR PERSONS.
IX. OF PROCEEDINGS RESPECTING MASTERS, APPRENTICES, AND SERVANTS.
X. OF CRIMINAL STATISTICS.
XI. MISCELLANEOUS PROVISIONS RESPECTING PROCEEDINGS OF A CRIMINAL NATURE.

TITLE I.

Of Coroners' Inquests, and the Duties of Coroners.

SEC. 773. Coroner's jury and examination.
774. Jury to be sworn.
775. Witnesses to be subpœnaed.
776. Compelling attendance of witnesses, and punishing their disobedience.
777. Verdict of the jury.
778. Testimony, how taken and filed.
779. If defendant arrested before inquisition filed, depositions to be delivered to magistrate, and by him returned.
780. Warrant for arrest of party charged by verdict.
781. Form of warrant.
782. Warrant, how executed.
783. Proceedings of magistrate, on defendant's being brought before him.
784. Clerk with whom inquisition is filed, to furnish magistrate with copy of the same and of testimony returned therewith.
785. Coroner to deliver money or property found, on deceased, to county treasurer.
786. County treasurer to place money to credit of county; and to sell other property and place proceeds to credit of county.
787. Money, when and how paid to representatives of deceased.

SEC. 788. Supervisors to require statement under oath, from coroner, before auditing his accounts.
789. In New York, police justices may perform duties of coroner, during his inability.
790. Compensation of coroners.

§ 773. **Coroner's jury, and examination.** — *Whenever* a coroner is informed that a person has been killed or dangerously wounded by another, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or has committed suicide, he must go to the place where the person is, and forthwith inquire into the cause of the death or wounding, and summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, if such death or wounding be of a criminal nature, to appear before him forthwith, at a specified place, to inquire into the cause of the death, or wound, and if it shall appear from the sworn examination of the informant or complainant, or if it shall appear from the evidence taken on or during the inquisition that any person or persons are chargeable with the killing or wounding, or that there is probable cause to believe that any person or persons are chargeable therewith, and if such person or persons be not in custody he must forthwith issue a warrant for the arrest of the person or persons charged with such killing or wounding, and upon the arrest of any person or persons chargeable therewith, he must be arrainged before the coroner for examination, and the said coroner shall have power to commit the person or persons so arrested to await the result of the inquisition. Any coroner shall be disqualified from acting as such in any case where the person killed or dangerously wounded or dying suddenly, as aforesaid, is a co-employe with said coroner, of any person or persons, association or corporation, or where it appears that the killing or wounding has been occasioned, directly or indirectly, by the employer of said coroner. [AM'D CH. 562 OF 1892. IN EFFECT MAY 13, 1892.]

People *v.* Millett, 92 N. Y. 29; 1 N. Y. Cr. 354; Crisfield v. Perrine, 15 Hun, 202; aff'd 81 N. Y. 622; People *v.* Fitzgerald, 105 id. 146; rev'g 43 Hun, 35; People *v.* Mondon, 103 N. Y. 211; Ohio Ry. Co. *v.* Lackey, 78 Ill. 55, 259; People *v.* Devine, 44 Cal. 458.

§ 774. **Jury to be sworn.**—When six or more of the jurors appear, they must be sworn by the coroner to inquire who the person was, and when, where and by what means he came to his death or was wounded, as the case may be, and into the circumstances attending the death or wounding, and to render a true verdict thereon, according to the evidence offered to them, or arising from the inspection of the body.

§ 775. Witnesses to be subpœnaed. — The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses, every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a surgeon or physician, who must in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death or wounding.

Crisfield *v.* Perrine, 15 Hun, 200; aff'd 81 N. Y. 622; People *v.* Beigler, 3 Park. 316; People *v.* Collins, 20 How. 211; 11 Abb. 406; Doremus *v.* New York, 6 Daly, 121; People ex rel. Sherman *v.* Sup'rs, etc. 30 How. 173; Van Hoevenburgh *v.* Hasbrouck, 45 Barb. 197; Stevens *v.* Com'rs, etc. 46 Ind. 541.

§ 776. Compelling attendance of witnesses, and punishing their disobedience.—A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, as upon a subpœna issued by a magistrate, as provided in this Code.

See § 619, *supra*; Code Civ. Proc. §§ 8–13, 853–863. People *v.* Mondon, 103 N. Y. 211.

§ 777. Verdict of the jury. — After inspecting the body, and hearing the testimony, the jury must render their verdict, and certify it by an inquisition in writing, signed by them, and setting forth who the person killed or wounded is, and when, where, and by what means he came to his death or was wounded; and if he were killed or wounded, or his death were occasioned by the act of another, by criminal means, who is guilty thereof, in so far as by such inquisition they have been able to ascertain.

People *v.* Mondon, 103 N. Y. 216; 4 N. Y. Cr. 556; People *v.* Budge, 4 Park. 519.

§ 778. Testimony, how taken and filed.— The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and must be forthwith filed by him, with the inquisition, in the office of the clerk of the court of sessions of the county, or of a city court, having power to inquire into the offense by the intervention of a grand jury.

See § 395, *ante*. Matter of Ramscar, 1 N. Y. Cr. 36; 10 Abb. N. C. 442; 63 How. 255; People *v.* Taylor, 43 Hun, 419; People *v.* Mondon, 103 N. Y. 211; 4 N. Y. Cr. 126; People *v.* McGloin, 91 N. Y. 241; People ex rel. Cosford *v.* Board, etc. 38 N. Y. St. Rep. 966.

§ 779. If defendant arrested before inquisition filed, depositions to be delivered to magistrate, etc.— If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony, to the magistrate before whom the defendant is brought, as provided in section 781, who must return it with the

depositions and statement taken before him, in the manner prescribed in section 221.

Matter of Ramscar, 1 N. Y. Cr. 33; 10 Abb. N. C. 442; 63 How. 255.

§ 780. Warrant for arrest of party charged by verdict.— If the jury find that the person was killed or wounded by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another, by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner must issue a warrant, signed by him with his name of office, into one or more counties, as may be necessary, for the arrest of the person charged.

Matter of Ramscar, 1 N. Y. Cr. 33; 10 Abb. N. C. 442; 63 How. 255.

§ 781. Form of warrant.— The coroner's warrant must be in substantially the following form: County of Albany (or as the case may be). In the name of the people of the State of New York, to any *sheriff, constable, marshal or policeman in this county:* An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the act of C. D. by criminal means (or as the case my be), as found by the inquisition; *or, information having been this day laid before me that A. B. has been killed or dangerously wounded by C. D., by criminal means (or as the case may be)*, you are *hereby* commanded forthwith to arrest the above-named C. D. and *bring him before me, or in the case of my absence or inability to act, before the nearest or most accessible coroner in this county.*

Dated at the city of Albany (or as the case may be), this day of , 18 .

E. F.,
Coroner of the County of Albany.
(Or as the case may be).

[AM'D CH. 321 OF 1887.]

Matter of Ramscar, 1 N. Y. Cr. 33; 10 Abb. N. C. 442; 63 How. 255.

§ 782. Warrant, how executed.— The coroner's warrant may be served in any county; and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information; except, that when served in another county, it need not be indorsed by a magistrate of that county.

Matter of Ramscar, 1 N. Y. Cr. 33; 10 Abb. N. C. 442; 63 How. 255; Slater v. Wood, 9 Bosw. 15.

§ 783. Proceedings of magistrate, etc.— The magistrate, *or coroner*, when the defendant is brought before him, must proceed to

examine the charge contained in the inquisition *or information*, and hold the defendant to answer or discharge him therefrom, in the same manner in all respects as upon a warrant of arrest *on* an information. [AM'D CH. 321 OF 1887.]

Matter of Ramscar, 1 N. Y Cr. 33; 10 Abb. N. C. 442; 63 How. 255.

§ 784. **Clerk, etc., to furnish, etc.**—Upon the arrest of the defendant, the clerk with whom the inquisition is filed, must, without delay, furnish to the magistrate. *or coroner, before whom the defendant is brought*, a certified copy of *the inquisition* and of the testimony returned therewith. [AM'D CH. 321 OF 1887.]

Matter of Ramscar, 1 N. Y. Cr. 33; 10 Abb. N. C. 442; 63 How. 255.

§ 785. **Coroner to deliver money, or property found, on deceased, to county treasurer.**—The coroner must within thirty days after an inquest upon a dead body, deliver to the county treasurer, any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

Sutton v. Public Adm'r, 4 Dem. 35.

§ 786. **County treasurer to place money to credit of county, etc.**— Upon the delivery of money to the treasurer he must place it to the credit of the county. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice; and must, in like manner, place the proceeds to the credit of the county.

Sutton v Public Adm'r, 4 Dem. 35.

§ 787. **Money, when and how paid to representatives of deceased.**— If the money in the treasury be demanded within six years, by the legal representatives, of the deceased, the treasurer must pay it to them, after deducting the fees and expenses of the coroner and of the county, in relation to the matter, or it may be so paid at any time thereafter, upon the order of the board of supervisors.

Sutton v Public Adm'r, 4. Dem 35.

§ 788. **Supervisors to require statement under oath from coroner, before auditing his accounts.**—Before auditing and allowing the account of the coroner, the board of supervisors must require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true and that the

money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

§ 789. **In New York, police justices may perform duties of coroner, during his inability.**—In the city of New York, if the coroner be absent or be unable, for any cause, to attend, the duties imposed by this title may be performed by a police justice, but by no other officer, with the same authority, and subject to the same obligations and penalties as applied to the coroner.

§ 790. **Compensation of coroners.**—The coroner is entitled, for his services, in holding inquests and performing any other duty incidental thereto, to such compensation as defined by special statutes.

TITLE II.

Of Search Warrants.

SEC. 791. Search warrant defined.
792. Upon what grounds it may be issued.
793. It can not be issued but upon probable cause, supported by affidavit.
794. Before issuing warrant, magistrate must examine, on oath, the complainant and his witnesses.
795. Depositions, what to contain.
796. Magistrate, when to issue warrant.
797. Form of the warrant.
798. By whom served.
799. Officer may break open door or window, to execute warrant.
800. May break open door or window, to liberate person acting in his aid, or for his own liberation.
801. When warrant may be served in the night time, and direction therefor.
802. Within what time warrant must be executed and returned.
803. Officer to give receipt for property taken.
804. Property, when delivered to magistrate, how disposed of.
805. Return of warrant, and delivery to magistrate of inventory of property taken.
806. Magistrate to deliver copy of inventory to the person from whose possession property is taken, and to applicant for warrant.
807. If grounds for warrant controverted, magistrate to take testimony.
808. Testimony, how taken and authenticated.
809. Property, when to be restored to person from whom it was taken.
810. Depositions, search warrant, return and inventory, to be returned to court of sessions or city court having jurisdiction of offense.
811. Maliciously and without probable cause procuring search warrant, a misdemeanor.
812. Peace officer, exceeding his authority.
813. Person charged with felony supposed to have a dangerous weapon.

People ex rel. Sherrer *v.* Walsh, 67 How. 484.

§ 791. **Search warrant defined.**—A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

People *v.* Noelke, 29 Hun, 469; 1 N. Y. Cr. 268; aff'd, 93 N.Y. 137; 1 N.Y. Cr. 495.

§ 749. **Review on appeal from minor courts.**— A judgment upon conviction, rendered by a court of special sessions, police court, police magistrate, or justice of the peace, in any criminal action or proceedings or special proceeding of a criminal nature, *including a judgment of commitment made under section two hundred and ninety-one of the Penal Code,* may be reviewed by the court of sessions of the county, upon an appeal as prescribed by this title, and not otherwise; and any appeals heretofore taken and allowed from a judgment of any police court or police magistrate in the manner that appeals are directed to be taken and allowed by this title, and now pending undetermined in any court of this state, are hereby declared to be legal and valid and of the same force and effect as if taken after the passage of this act. *An appeal from a judgment of commitment made under section two hundred and ninety-one of the Penal Code may be allowed to any person having, previous to such commitment, a right to the custody of the child; but upon such appeal, in addition to the notice and papers required by this title to be served on appeals in criminal actions, notice of all proceedings and copies of the affidavit and allowance of appeal therein must be served upon the institution named in the commitment, and upon the society mentioned in section two hundred and ninety-three of the Penal Code, if there be one within the county. Such institution and society, or either, shall have the right to move to argue or dismiss, and to be heard upon the argument of such appeal; and shall have the like right to appeal from the judgment of the court of sessions of the county to the supreme court as is conferred by section seven hundred and seventy of this Code upon a defendant, and to the court of appeals by section five hundred and nineteen of this Code; and pending any appeal and until the final determination thereof the child named in the commitment must remain in the custody of the institution therein specified.* [AM'D CH. 372 OF 1884 AND CH. 39 OF 1890.]

People *v.* Trumble, 1 N. Y. Cr. 443; 29 Hun, 205; People *v.* Norton, 33 id. 277; 2 N. Y. Cr. 322; Killoran *v.* Barton, 26 Hun, 649; People ex rel. Scherer *v.* Walsh, 33 id. 345; 2 N. Y. Cr. 325; 67 How. 432; People *v.* Bauer, 3 N. Y. Cr. 433; People ex rel. Wright *v.* Court, etc. 45 Hun, 55; People *v.* Vitan, 20 Abb. N. C. 298; People *v.* Carr, 54 Hun, 444.

§ 750. **Appeal, for what causes allowed.**— An appeal may be allowed for an erroneous decision or determination of law or fact upon the trial.

§ 751. **Appeal, how taken.**— For the purpose of appealing, the defendant, or some one on his behalf, must within ten days after the judgment, *or within twenty days after the commitment where the appeal is from the latter,* make an affidavit stating the fact show-

ing the alleged errors in the proceedings or conviction *or commitment* complained of, and must within that time present it to the county judge or a *justice* of the supreme court, or in the city and county of New York, to the recorder or a judge authorized to hold a court of general sessions in that city, and may apply thereon for the allowance of the appeal. [AM'D CH. 39 OF 1890.]

People ex rel. Baker *v.* Beatty, 39 Hun, 476; 4 N. Y. Cr. 287; People *v.* McGann, 43 Hun, 57.

§ 752. **How allowed.**—If, in the opinion of the judge, it is proper that the question arising on the appeal should be decided by the court of sessions, he must indorse on the affidavit an allowance of the appeal to that court.

People ex rel. Baker *v.* Beatty, 39 Hun, 477; 4 N. Y. Cr. 287.

§ 753. **Release on bail pending an appeal.**—Upon allowing the appeal, if satisfied that there is a reasonable doubt whether the conviction should stand, but not otherwise, the judge may take from the defendant, a written undertaking, with such sureties as he may approve, that the defendant will abide the judgment of the court of sessions upon the appeal, and may thereupon order that he be discharged from imprisonment, on service of the order upon the officer having him in custody, or if he be not in custody, that all proceedings on the judgment be stayed. [AM'D CH. 279 OF 1892. IN EFFECT SEPT. 1, 1892.]

§ 754. **Undertaking, when and with whom filed.**—The undertaking upon the appeal must be immediately filed with the clerk of the court of sessions.

§ 755. **Delivery of affidavit, etc.**—The affidavit and allowance of the appeal must be delivered to the magistrate, or clerk of the court *rendering the judgment*, within five days after the allowance of the appeal, and when so delivered the appeal is deemed taken. [AM'D CH. 39 OF 1890.]

§ 756. **Return, when and how made.**—The magistrate or court rendering the judgment, must make a return to all the matters stated in the affidavit, and must cause the affidavit and return to be filed in the office of the clerk of the court of sessions, within ten days after the service of the affidavit and allowance of the appeal.

People *v.* McGann, 43 Hun, 57.

§ 757. **Compelling return.**—If the return be not made within the time prescribed in the last section, the court of sessions, or the pre-

liberating a person, who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

§ 801. **When warrant may be served in the night time, etc.**—The magistrate must insert a direction in the warrant, that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched; in which case, he may insert a direction that it be served at any time of the day or night.

§ 802. **Within what time warrant must be executed and returned.**—A search warrant must be executed, and returned to the magistrate by whom it was issued, if issued in the city and county of New York, within five days after its date, and if in any other county, within ten days. After the expiration of those times respectively, the warrant, unless executed, is void.

§ 803. **Officer to give receipt for property taken.**—When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail), to the person from whom it was taken by him, or in whose possession it was found, or, in the absence of any person, he must leave it in the place where he found the property.

§ 804. **Property when delivered to magistrate, how disposed of.**—When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 687 to 689, both inclusive. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of section 792, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

§ 805. **Return of warrant, and delivery to magistrate of inventory of property taken.**—The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate to the following effect: "I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

§ 806. **Magistrate to deliver copy of inventory to the person, etc.**—The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

§ 807. **If grounds for warrant controverted, magistrate to take testimony.**—If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

§ 808. **Testimony how taken and authenticated.**—The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in section 200.

§ 809. **Property, when to be restored, etc.**—If it appear that the property taken is not the same as that prescribed in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

§ 810. **Depositions, search warrant, etc. to be returned to court of sessions or city court having jurisdiction, etc.**—The magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the next court of sessions of the county, or city court, having power to inquire into the offense in respect to which the search warrant was issued, by the intervention of a grand jury, at or before its opening on the first day.

§ 811. **Maliciously, etc., procuring search warrant, a misdemeanor.**—A person, who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

§ 812. **Peace officer, exceeding his authority.**—A peace officer, who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

See § 120 of Penal Code.

§ 813. **Person charged with felony supposed to have a dangerous weapon.**—When a person charged with a felony is supposed by the magistrate before whom he is brought, to have upon his person a dangerous weapon, or any thing which may be used as evidence of the commission of the offense, the magistrate may direct him to be

searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

TITLE III.

Of the Outlawry of Persons Convicted of Treason.

SEC. 814. When application for outlawry may be made.
815. On what proof to be made.
816. Order that the defendant appear to receive judgment, or be outlawed.
817. Publication of order.
818. Judgment on appearance of defendant, or on his not appearing.
819 Effect of the judgment.
820. Filing judgment-roll, and transcripts thereof.
821. Judgment-roll, of what to consist.
822. Appeal may be at any time taken, by defendant, from judgment.
823. Appeal, how taken, and proceedings thereon.
824. Effect of reversal.
825. Defendant may be arrested to receive judgment, notwithstanding outlawry.
826. No other proceeding for outlawry in criminal cases allowed.

§ 814. **When application for outlawry may be made.**— When, upon a bench warrant issued for the apprehension of a person who has pleaded guilty, or against whom a verdict has been rendered, upon an indictment for treason, it is duly returned that the defendant can not be found, the district attorney of the county may apply to the court in which the conviction was had, for judgment of outlawry.

§ 815. **On what proof to be made.**— The application must be founded upon the return of the bench warrant, and upon proof, by affidavit, that the defendant has escaped, and on diligent search can not be found within the county.

§ 816. **Order that the defendant appear to receive judgment, or be outlawed.**— The court, upon being satisfied that the defendant has escaped, and can not, upon diligent search, be found in the county, must make an order that he appear on the first day of the next term, to receive judgment upon the conviction or be outlawed.

§ 817. **Publication of order.**— The order must be immediately published, once a week for six successive weeks, in a newspaper published in the county, and in the state paper. The expense of the publication is a county charge.

§ 818. **Judgment on appearance of defendant, etc.**— If the defendant appear, judgment must be rendered against him upon the conviction. If he do not appear, the court, upon proof of the

due publication of the order, must render judgment that the defendant be outlawed, and that all his civil rights be forfeited.

§ 819. **Effect of the judgment.**—The defendant is thereupon deemed civilly dead, and forfeits to the people of this state during his life-time, and no longer, all freehold estate in real property, of which he was seized in his own right, at the time of committing the treason, or at any time thereafter, and all his personal property.

§ 820. **Filing judgment-roll, and transcripts thereof.**—Upon a judgment of outlawry, the judgment-roll must be made up, and filed with the clerk of the county in which the conviction was had, and docketed with the same effect as in a civil action. A transcript thereof may also be filed and docketed, with the like effect, in any other county.

§ 821. **Judgment-roll, of what to consist.**—The judgment-roll consists of the several matters prescribed in section 485, except the fifth subdivision; to which must be annexed a certified copy of the order to appear for judgment, the affidavits proving its publication, and a certified copy of the judgment of outlawry.

§ 822. **Appeal may be at any time taken, by defendant, from judgment.**—An appeal may be taken by the defendant, at any time, from a judgment of outlawry.

§ 823. **Appeal, how taken and proceedings thereon.**—The appeal may be taken in person or by counsel, in the same manner, and the proceedings thereon are the same, as upon an appeal from a judgment of conviction on an indictment.

§ 824. **Effect of reversal.**—If the judgment be reversed, on appeal, the defendant is restored to his civil rights.

§ 825. **Defendant may be arrested to receive judgment, notwithstanding outlawry.**—Notwithstanding judgment of outlawry against the defendant, he may be arrested at any time thereafter, to receive judgment upon the conviction.

§ 826. **No other proceeding for outlawry in criminal cases allowed.**—No other proceeding for the outlawry of the defendant in a criminal action, can be had than that provided in this title.

TITLE IV.

Of Proceedings against Fugitives from Justice.

CHAPTER I. Fugitives from another state or territory, into this state.
II. Fugitives from this state, into another state or territory.

CHAPTER I.

FUGITIVES FROM ANOTHER STATE OR TERRITORY, INTO THIS STATE.

SEC. 827. To be delivered up by the governor, on demand of the executive authority of the state or territory from which they have fled.
828. Magistrate to issue warrant.
829. Proceedings for arrest and commitment of the person charged.
830. When and for what time to be committed.
831. His admission to bail.
832. Magistrate to give notice to the district attorney, of the name of the person and the cause of his arrest.
833. District attorney to give notice to executive authority of the state or territory, etc.
834. Person arrested to be discharged, unless surrendered within the time limited.
835. Magistrate to return his proceedings to the next court of sessions; proceedings thereon.

§ 827. To be delivered up by the governor, on demand, etc.—*It shall be the duty of the governor, in all cases where, by virtue of a requisition made upon him by the governor of another state or territory, any citizen, inhabitant or temporary resident of this state is to be arrested, as a fugitive from justice (provided that said requisition be accompanied by a duly certified copy of the indictment or information from the authorities of such other state or territory, charging such person with treason, felony or crime in such state or territory), to issue and transmit a warrant for such purpose to the sheriff of the proper county or his under-sheriff, or in the cities of this state (except in the city and county of New York, where such warrant shall only be issued to the superintendent or any inspector of police) to the chiefs, inspectors or superintendents of police, and only such officers as are above mentioned, and such assistants as they may designate to act under their direction shall be competent to make service of or execute the same. The governor may direct that any such fugitive be brought before him, and may for cause, by him deemed proper, revoke any warrant issued by him, as herein provided. The officer to whom is directed and intrusted the execution of the governor's warrant must, within thirty days from its date, unless sooner requested, return the same and make return to the governor of all his proceedings had thereunder, and of all facts and circumstances relating thereto. Any officer of this state, or of any city, county, town or village thereof, must upon request of the governor, furnish him with such information as he may desire in regard to any person or matter mentioned in this chapter.*

2. *Before any officer to whom such warrant shall be directed or intrusted shall deliver the person arrested into the custody of the agent*

or agents named in the warrant of the governor of this state, such officer must, unless the same be waived, as hereinafter stated, take the prisoner or prisoners before a judge of the supreme court, of any superior city court, or the presiding judge of a court of sessions, who shall, in open court if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process, and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, affidavit or warrant annexed thereto, or in the warrant issued by the governor thereon, he or they may have a writ of habeas corpus upon filing an affidavit to that effect. Said person or persons so arrested may, in writing, consent to waive the right to be taken before said court or a judge thereof at chambers. Such consent or waiver shall be witnessed by the officer intrusted with the execution of the warrant of the governor, and one of the judges aforesaid or a counselor-at-law of this state, and such waiver shall be immediately forwarded to the governor by the officer who executed said warrant. If, after a summary hearing as speedily as may be consistent with justice, the prisoner or prisoners shall be found to be the person or persons indicted or informed against, and mentioned in the requisition, the accompanying papers and the warrant issued by the governor thereon, then the court or judge shall order and direct the officer intrusted with the execution of the said warrant of the governor to deliver the prisoner or prisoners into the custody of the agent or agents designated in the requisition and the warrant issued thereon, as the agent or agents upon the part of such state to receive him or them; otherwise to be discharged from custody by the court or judge.

If upon such hearing the warrant of the governor shall appear to be defective or improperly executed, it shall be by the court or judge returned to the governor, together with a statement of the defect or defects, for the purpose of being corrected and returned to the court or judge, and such hearing shall be adjourned a sufficient time for the purpose, and in such interval the prisoner or prisoners shall be held in custody until such hearing be finally disposed of.

3. *It shall not be lawful for any person, agent or officer to take any person or persons out of this state, upon the claim, ground or pretext that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings afore described, and any officer, agent, person or persons who shall procure, incite or aid in the arrest of any citizen, inhabitant or temporary resident of this state, for the purpose of taking him or sending him to another state, without a requisition first duly had and obtained, and without a warrant duly issued by the governor of this state, served by some officer as in this section provided, and without, except in case of waiver in writing as*

aforesaid, taking him before a court or judge as aforesaid, unless in pursuance to the provisions of the following sections of this chapter, and any officer, agent, person or persons who shall, by threats or undue influence, persuade any citizen, inhabitant or temporary resident of this state to sign the waiver of his right to go before a court or judge as hereinbefore provided, or who shall do any of the acts declared by this chapter to be unlawful, shall be guilty of a felony, and upon conviction be sentenced to imprisonment in a state prison or penitentiary for the term of one year.

4. *Any willful violation of this act by any of the above named officers shall be deemed a misdemeanor in office.* [AM'D CH. 638 OF 1886.]

People ex rel. Barlow *v.* Curtis, 50 N. Y. 321; aff'g 44 How. 171; Matter of Briscoe, 51 id. 422; Matter of Solomans, 1 Abb. (N. S.) 347; Matter of Rutter, 7 id. 67; Matter of Brown, 4 N. Y. Cr. 576; People ex rel. Nubell *v.* Byrnes, 33 Hun, 98; 2 N. Y. Cr. 398; People ex rel. Jourdan *v.* Donohue, 84 N. Y. 438; Matter of Hope, 7 N. Y. Cr. 406; Matter of Reinitz, id. 74; Matter of Baruch, 24 Abb. N. C. 109; Matter of Mitchell, 4 N. Y. Cr. 596; Adrianco *v.* Lagrave, 59 N. Y. 110; Browning *v.* Adams, 51 How. 172; People ex rel. Draper *v.* Pinkerton, 77 N. Y. 245; 17 Hun, 199; People ex rel. Lawrence *v.* Brady, 56 N. Y. 182; Matter of Scrafford, 59 Hun, 320; Ker *v.* People, 110 Ill. 627; 51 Am. Rep. 706; aff'd 119 U. S. 436; Hackney *v.* Welch, 107 Ind. 253; 57 Am. Rep. 101; Matter of Roberts, 24 Fed. Rep. 132; Ex parte Hibbs, 26 id. 421; Ex parte Coy, 32 id. 911; State *v.* Hall, 40 Kans. 338; State *v.* Summons, 39 id. 262; State *v.* Vanderpool, 39 Ohio St. 273; Compton *v* Wilder, 40 id. 130.

§ 828. **Magistrate to issue warrant.**— A magistrate may issue a warrant *as a preliminary proceeding to the issuing of a requisition by the governor of another state or territory upon the governor of this state* for the apprehension of a person charged *with treason, felony or other crime,* who shall flee from justice, and be found within this state. [AM'D CH. 638 OF 1886.]

§ 829. **Proceedings for arrest and commitment of the person charged.**— The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Code, for the arrest and commitment of a person charged with a public offense committed in this state; except, that an exemplified copy of an indictment found, or other judicial proceeding had against him, in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

People ex rel. Lawrence *v.* Brady, 56 N. Y. 182; Ex parte Leland, 7 Abb. (N. S.) 64; People ex rel. Draper *v.* Pinkerton, 17 Hun, 199; Ex parte Solomons, 1 Abb. (N. S.) 347; Ex parte Hayward, 1 Sandf. 701.

§ 830. **When and for what time to be committed.**—If from the examination *under such warrant* it appears *probable* that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper

custody in his county for a time specified in the warrant, to enable an arrest of the fugitive *to be made* under the warrant of the governor of this state, which *commitment shall not exceed thirty days exclusive of the day of arrest*, on the requisition of the executive authority of the state or territory in which he *is charged* to have committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged. [AM'D CH. 638 OF 1886.]

Ex parte Washburn, 4 John. Ch. 106; 3 Wheeler Cr. Cas. 473; People v. Goodhue, 2 John. Ch. 198; 1 Wheeler Cr. Cas. 427.

§ 831. **His admission to bail.**—*Any judge of any court named in section eight hundred and twenty-seven* may *in his discretion* admit the person arrested to bail by an undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, *which must not be later than the expiration of thirty days from the date of arrest exclusive of such date*, and for his surrender, to be arrested upon the warrant of the governor of this state. [AM'D CH. 638 OF 1886.]

§ 832 **Magistrate to give notice to the district attorney, etc.**—Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney of the county, of the name of the person and the cause of his arrest.

§ 833. **District attorney to give notice to executive authority of the state, etc.**—The district attorney must immediately thereafter give notice to the executive authority of the state or territory, or to the prosecuting attorney, or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

§ 834. **Person arrested to be discharged, unless surrendered, etc.**—The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this state.

§ 835. Repealed. [CH. 638 OF 1886.]

Ch. II. § 836-837. Repealed. [CH. 360 OF 1882.]

TITLE V.

Of Proceedings respecting Bastards.

CHAPTER I. Proceedings before magistrates, respecting bastards.
II. Appeals from the orders of magistrates, respecting bastards.
III. Enforcement of the undertaking for the support of the bastard or its mother, or for appearance on appeal.

CHAPTER I.

PROCEEDINGS BEFORE MAGISTRATES, RESPECTING BASTARDS.

SEC. 838 Definition of a bastard.
839 Who are liable for its support
840. When bastard, chargeable to the public, is born or is likely to be born, application to be made to a justice of the peace or police justice.
841. Examination by the magistrate, and warrant against the father.
842. Justice designated as a magistrate, and person proceeded against as defendant.
843. Warrant, when to be served in another county.
844. Magistrate in another county, may take undertaking for support of bastard and mother, or for appearance of defendant at the sessions.
845. On giving undertaking, defendant to be discharged.
846. If undertaking not given, defendant to be taken before magistrate who issued the warrant.
847. Before what magistrate in the same county, defendant is to be taken, when the magistrate issuing the warrant is unable to act.
848. The magistrate to associate with himself another magistrate, and they to examine the matter.
849. Adjournment of examination. Security from defendant.
850. Determination of the case, and order of the magistrates.
851. Defendant to pay the costs, and give undertaking for support of bastard and mother, or for appearance at sessions.
852. On giving undertaking defendant to be discharged; otherwise to be committed.
853. Commitment of defendant, during examination.
854. Proceedings by magistrate, when security is given by defendant on arrest out of the county.
855. Examination in such case, and order thereon.
856. Magistrates may compel mother to disclose the father of the bastard. Proceedings, if she refuse.
857. If mother possess property, two magistrates may make an order that she pay for the support of the child.
858. If she do not comply, she must be committed, or discharged on undertaking.
859. Magistrates may reduce amount directed to be paid by the father or mother. Court of sessions may reduce or increase it.
860. Proceedings against the father or mother, absconding from their place of residence.

§ 838. Definition of a bastard. — A bastard is a child who is begotten and born,

1. Out of unlawful matrimony;

2. While the husband of its mother was separate from her, for a whole year previous to its birth; or,

3. During the separation of its mother from her husband, pursuant to a judgment of a competent court.

People v Overseers of Ontario, 15 Barb 286; People ex rel. Wright v. Court, etc 45 Hun. 58. State v McDowell, 101 N. C.734; Pittsford v. Chittenden, 58 Vt. 49; Ratcliff v. Wales, 1 Hill, 63; Babcock v. Booth, 2 id. 186; Chamberlain v. People. 23 N. Y 90; People ex rel. Fuller v. Carney, 29 Hun, 47; Watts v. Owens, 62 Wis 512; Petrie v Howe, 4 T. & C 85; State v. Danforth, 48 Iowa, 43; 30 Am. Rep. 387; Hanawalt v State, 64 Wis. 84; 54 Am. Rep. 588; Clark v. Bradstreet, 80 Me. 454; 6 Am. St. 221. See 6 N. Y. Supp. 423.

§ 839. Who are liable for its support.—The father and mother of a bastard are liable for its support. In case of their neglect or inability, it must be supported by the county, city or town in which it is born, as provided by special statutes.

Infancy no defense. People *v.* Moores, 4 Denio, 518. See People *v.* Overseers of Ontario, 15 Barb. 286. Todd *v.* Weber, 95 N. Y. 181; Hook *v.* Pratt, 78 id. 371; Birdsall *v.* Edgerton, 25 Wend. 619; Moncrief *v.* Ely, 19 id. 405; Rheel *v.* Hicks, 25 N. Y. 289; Bunn *v.* Winthrop, 1 Johns. Ch. 337. Miller *v.* Anderson, 43 Ohio St. 473; 54 Am. Rep. 823; Robalina *v.* Armstrong, 15 Barb. 247; People *v.* Kling, 6 id. 366.

§ 840. When bastard, chargeable to the public, is born, etc.—If a woman be delivered of a bastard, or be pregnant of a child likely to be born such, and which is chargeable to a county, city or town, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the woman is, must apply to a justice of the peace or police justice in the county, to inquire into the facts of the case.

Justice can only act in his county and on proper official application. Sprague *v.* Eccleston, 1 Lans. 74. See Wallsworth *v.* McCullough, 10 Johns. 93; Birdsall *v.* Edgerton, 25 Wend. 619; Rivenburgh *v.* Henness, 4 Lans. 208. Evidence. People ex rel. Fuller *v.* Carney, 29 Hun, 47.

§ 841. Examination by the magistrate and warrant against the father.—The magistrate must, by the examination of the woman on oath, and any other testimony which may be offered, ascertain the father of the bastard, and must issue his warrant, directed to a peace officer of the county, commanding him, without delay, to apprehend the father and bring him before the justice for the purpose of having an adjudication as to the filiation of the bastard.

See cases cited under § 838, *ante.*

§ 842. Justice designated as a magistrate, and person proceeded against as defendant.—An officer issuing a warrant or making an examination, as provided in this chapter, is designated as a magistrate, and the person against whom the warrant is issued, as the defendant.

Matter of McGrory *v.* Henderson, 43 Hun, 438; 441.

§ 843. Warrant, when to be served in another county.—If the defendant reside in another county than that in which the warrant issued, the magistrate must, by an indorsement thereon, direct the sum in which the defendant shall give security, and the officer must deliver the warrant to a justice of the peace or police justice in the city or town in which the defendant resides or is found. The magistrate to whom it is presented, on proof, under oath, of the signature of the magistrate who issued the warrant, must then indorse a direction thereon, that it be served in the county in which he resides, and

the defendant may be arrested in that county accordingly. Upon this proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly issued.

See 28 Alb. L. J. 160.

§ 844. **Magistrate in another county, may take undertaking, etc.**—When the defendant is arrested in another county, he must be taken before the magistrate who indorsed the warrant, or before another magistrate of the same city or county, who may take from the defendant an undertaking, with sufficient sureties, to the effect:

1. That he will indemnify the county, and town or city, where the bastard was or is likely to be born, and every other county, town or city, against any expense for the support of the bastard, or of its mother during her confinement and recovery, and to pay the costs of arresting the defendant, and of any order of filiation that may be made, or that the sureties will pay the sum indorsed on the warrant; or,

2. That the defendant will appear and answer the charge at the next court of sessions of the county where the warrant was issued, and obey its order thereon.

Attorney can not be surety. Rule 5 Sup. Ct. See People v. Tilton, 13 Wend. 597; People v. Mitchell, 4 Sandf. 466; Hoagland v. Hudson, 8 How. 343.

§ 845. **On giving undertaking, defendant to be discharged.**—When either of the undertakings mentioned in the last section is given, the magistrate must discharge the defendant, and must indorse a certificate of the discharge upon the warrant. He must also deliver the warrant, with the undertaking, to the officer, who must return it to the magistrate granting the warrant, by whom the same proceedings must be had, as if he had taken the undertaking.

§ 846. **If undertaking not given, etc.**—If the defendant do not give security, as provided in section 844, the officer must take him before the magistrate who issued the warrant.

§ 847. **Before what magistrate in the same county defendant is to be taken when magistrate issuing warrant is unable to act.**—If, however, the magistrate who issued the warrant be absent or unable to act, the defendant must be taken before the nearest or most accessible magistrate in the same county. The officer must, at the same time, deliver to the magistrate, the warrant with his return indorsed and subscribed by him.

§ 848. The magistrate to associate with himself, another magistrate, etc.—The magistrate before whom the defendant is brought, as provided in the last two sections, must immediately associate with himself, another justice of the peace or police justice in the same county or city; and the two magistrates thus associated, must inquire into the charge, and must examine on oath, the woman who is the mother of, or pregnant with the bastard in the presence of the defendant, in respect to the charge, and hear any testimony which may be offered in relation thereto.

People ex rel. Reynolds *v.* Barnett, 3 Abb. N. C. 510; People ex rel. Com'rs, etc. *v.* Dando, 20 id. 245.

§ 849. Adjournment of examination; security from defendant.—The magistrates may, on the application of the defendant, for good cause, adjourn the examination, not exceeding thirty days, upon the defendant giving an undertaking, with two sufficient sureties, to the effect that he will appear before the magistrates at the time appointed, or that the sureties will pay the sum mentioned therein, which must be fixed by the magistrates, and which must be a full indemnity for the expense of supporting the bastard and its mother, as provided in section 851.

Departing without leave, after appearance, forfeits bond. People *v.* Jayne, 27 Barb. 58. People ex rel. Com'rs *v.* Dando, 20 Abb. N. C. 245; People *v.* Boardman, 24 How. 512; People ex rel. Van Aken *v.* Millham, 100 N. Y. 273; 4 N. Y. Cr. 127.

§ 850. Determination of the case and order of the magistrates.—Upon the hearing, the magistrates must determine who is the father of the bastard, and must proceed as follows:

1. If they determine that the defendant is not the father of the bastard, he must be forthwith discharged;

2. If they determine that he is the father, they must make an order of filiation, specifying therein the sum to be paid weekly or otherwise, by the defendant for the support of the bastard; and if the mother be indigent, the sum to be paid by the defendant for her support, during her confinement and recovery;

3. They must certify the reasonable costs of arresting the defendant, and of the order of filiation;

4. They must reduce their proceedings to writing, and subscribe them.

Subd. 1. Adjudication in favor of defendant is a bar. Thayer *v.* Overseers, etc. 5 Hill, 443; see People ex rel. Dumont *v.* Tompkins, G. Sess. 19 Wend. 154.
Subd. 3. See Dunham *v.* Monell, H & D. 377. People *v.* Moores, 4 Den. 518; Overseers, etc. *v.* Ely, H. & D. Supp. 379; People ex rel. Com'rs, etc. *v.* Dando, 20 Abb N. C. 245.
See § 873, *post.* Mayham *v.* Allan, 50 Hun, 344; People ex rel. Crouse *v.* Leavitt, 39 N. Y. St. Rep. 716.

§ 851. Defendant to pay the costs, and give undertaking for support, etc., or for appearance at sessions.— If the defendant be adjudged to be the father, he must immediately pay the amount certified for the costs of the arrest and of the order of filiation, and enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect,

1. That he will pay weekly or otherwise, as may have been ordered, the sum directed for the support of the child, and of the mother during her confinement and recovery, or which may be ordered by the court of sessions of the county; and that he will indemnify the county, and town or city, where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been or may be put to expense for the support of the bastard, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the magistrates; or,

2. That he will appear at the next court of sessions of the county, to answer the charge and obey its order thereon, or that the sureties will pay a sum equal to a full indemnity for supporting the bastard and its mother, as provided in the first subdivision of section 844.

Subd. 1. See People *v.* Meighan, 1 Hill, 298.

Subd. 2. People *v.* Greene, 5 Hill, 647; People *v.* Tilton, 13 Wend. 297. Bond in both conditions void. Hoagland *v.* Hudson, 8 How. Pr. 343. See People *v.* Mitchell, 4 Sand. 466. Subd. 2. Ramsey *v.* Childs, 34 Hun, 229; People ex rel. Van Aken *v.* Milham, 100 N Y. 273; People ex rel. Com'rs, etc. *v.* Dando, 20 Abb. N. C. 245; People ex rel. Downs *v.* Lindsay, 53 Hun, 234; Tillottson *v.* Martin, 40 id. 320; People *v.* Moores, 4 Den. 518; People *v.* Stowell, 2 id. 127; Hoagland *v.* Hudson, 8 How. 343; People ex rel. Crouse *v.* Leavett, 39 N. Y. St. Rep. 716.

§ 852.— On giving undertaking, defendant to be discharged; otherwise, to be committed.— Upon a compliance with the provisions of the last section, the magistrates must discharge the defendant; but otherwise, they or either of them must, by warrant, commit him to the county jail, or in the city of New York, to the city prison of that city, until he be discharged by the court of sessions of the county, or deliver an undertaking, as prescribed by the last section.

Costs must be paid in addition to giving undertaking. People *v.* Stowell, 2 Den. 127; People ex rel. Com'rs *v.* Dando, 20 Abb. N. C. 245; People ex rel. Crouse *v.* Leavitt, 39 N. Y. St. Rep. 716.

§ 853. Commitment of defendant, during examination.— During the examination, and until the defendant is discharged by the magistrate, he must remain in the custody of the officer who arrested him, unless an undertaking have been given for his appearance, as

provided in sections 844 and 849; and when committed to prison, he must be actually confined therein.

People ex rel. Com'rs v. Dando, 20 Abb. N. C. 245.

§ 854. Proceedings by magistrate when security is given by defendant on arrest out of the county.—When security taken out of the county, for the appearance of the defendant at the court of sessions, as provided in section 844, is returned to the magistrate who issued the warrant, he must associate with himself another magistrate of the same county, and the magistrates thus associated must proceed as provided in sections 848 to 850, both inclusive.

§ 855. Examination in such case, and order thereon.—The examination may be had, and the order of filiation made, in the absence of the defendant, unless, before the order is made, he require of the magistrate issuing the warrant, that the examination be had in his presence, in which case the examination must be had, as if the defendant had originally appeared.

§ 856. Magistrates may compel mother to disclose the father of the bastard; proceedings, if she refuse.—In making an examination authorized by this chapter, the magistrate issuing the warrant, or the magistrates making the examination, may compel the mother of a bastard, chargeable to a county, city or town, or a woman pregnant of a child likely to be born such, to disclose the name of the father of the bastard; or if she refuse to do so, may, by a warrant setting forth the cause thereof, at the expiration of one month from her delivery, if sufficiently recovered, commit her to the county jail, or in the city of New York, to the city prison of that city, until she disclose the name of the father.

See § 838, *ante*. Mother of bastard who is married, is incompetent to prove husband's non-access. People v. Overseers, 15 Barb. 286. Can not forcibly examine mother to establish pregnancy. People v. McCoy, 45 How. Pr. 216. Scott v. People, 4 Wend. 555.

§ 857. If mother possess property, etc.—If the mother of a bastard, chargeable or likely to become chargeable, as provided in section 840, be possessed of property in her own right, any two magistrates of the county or city where she is, on the application of any of the officers mentioned in that section, must examine into the matter, and may make an order charging the mother with the payment of money weekly, or otherwise, for the support of the bastard.

See § 839, *ante*. People v. Haddock, 12 Wend. 475; People v. Corbett, 8 id. 520.

§ 858. If she do not comply, she must be committed, or discharged on undertaking.—If, after service of the order upon the

mother, she do not comply therewith, she must be committed to the county jail, or in the city of New York, to the city prison of that city, until she comply, or enter into an undertaking, with sufficient sureties approved by the magistrates, to the effect that she will appear at the next court of sessions of the county, to answer the matters stated in the order, and obey its order thereon, or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrates.

§ 859 Magistrates may reduce amount directed to be paid by the father or mother; court of sessions may reduce or increase it.—The magistrates, who may have made an order against the father or mother of a bastard, as provided in sections 850 and 857, may, from time to time, for good cause, reduce the amount therein directed to be paid, and upon the application of any of the officers mentioned in section 840, the court of sessions of the county, upon ten days' notice to those officers, or to the father and mother of the bastard, may reduce or increase the amount so directed to be paid.

People ex rel. Com'rs v. Dando, 20 Abb. N. C. 245.

§ 860. Proceedings against the father or mother, etc.—If the father or mother of a bastard, or of a child likely to be born such, abscond from their place of residence, leaving the bastard chargeable or likely to become chargeable to the public, a superintendent of the poor of the county, or an overseer of the poor or other officer of the alms-house of the town or city where the bastard was born, or is likely to be born, may apply to any two magistrates of the city or county where any property, real or personal, of the father or mother may be, for authority to take the same. Upon due proof of the facts on oath, to the satisfaction of the magistrates, they must issue their warrant, and proceed thereon, in the manner provided in title VIII, of this part, in relation to persons absconding and leaving their children chargeable to the public.

See 6 N. Y. Supp. 422.

CHAPTER II.

APPEALS FROM THE ORDERS OF MAGISTRATES, RESPECTING BASTARDS.

SEC. 861. Who may appeal, and in what cases.
862. Appeal, how taken.
863. Papers to be transmitted by magistrates, to court of sessions.
864. Court to hear the case. Evidence on hearing.
865. Court may affirm, vacate or modify the order, or adjourn the hearing till the bastard be born.
866. If woman be not pregnant, or be married before her delivery, or the child be not born alive, defendant to be discharged.
867. Order of the court, on affirmance.

SEC. 868. Commitment of defendant, if he fail to give undertaking.
869. Undertaking for appearance on appeal, when forfeited.
870. When mother bound to appear at the sessions, court to proceed as as upon an appeal.
871. When the court may make an order against the mother, for the support of the bastard
872. Proceedings against the mother, on affirmance or modification of the order of the magistrates.
873, 874. Costs on appeal, when awarded and how paid.
875. When order of filiation vacated, except on the merits, court may make a new order of filiation, or bind the defendant to appear.
876. If order of filiation be vacated, except on the merits, magistrates may proceed anew.
877. Court to inquire into circumstances of father or mother, committed for not giving undertaking to support the bastard.
878. Father or mother unable to support the bastard, may be discharged.
879. Notice, before discharge, and examination of the matter.
880. Party can not be discharged, but by the court.

§ 861. Who may appeal, and in what cases.—A person deeming himself aggrieved by the order of two magistrates, made pursuant to the last chapter, may appeal therefrom to the next court of sessions of the county; except that a person who has executed an undertaking to obey an order of filiation, and indemnify the public, as provided in section 851, can not appeal from any other part of the order mentioned in section 850, than that which fixes the weekly or other allowance to be paid.

People ex rel. Fuller *v.* Carney, 29 Hun, 47; 1 N. Y. Cr. 270; People ex rel. Wright *v.* Court, etc. 45 Hun, 55; People ex rel. Com'rs *v.* Dando, 20 Abb. N. C. 245.

§ 862. Appeal, how taken.—When the father or mother of the bastard has entered into an undertaking for appearance at the next court of sessions of the county, as provided in sections 851 and 858, it is an appeal from the order of filiation or maintenance; and no other notice thereof is necessary. In any other case, the appeal is taken, by a written notice of at least ten days before the court, to the magistrates who made the order, and to the party affected thereby, or to the officer at whose instance it was obtained.

People ex rel. Fuller *v.* Carney, 29 Hun, 47; People ex rel. Com'rs *v.* Dando, 20 Abb. N. C. 245; People ex rel. Downs *v.* Lindsay, 53 Hun, 235.

§ 863. Papers to be transmitted by magistrates, to court of sessions.—The magistrates receiving an undertaking for appearance at the court of sessions, must transmit it to the court, before its opening, with a certified copy of the order appealed from.

People ex rel. Com'rs *v.* Dando, 20 Abb. N. C. 245.

§ 864. Court to hear the case, etc. Evidence on hearing.—The court must immediately, or at any other time it may appoint, proceed to hear the allegations and proofs of the parties; and the party in whose favor the order was made, must support it by evidence.

If the mother of the bastard be dead or insane, her testimony on the examination before the magistrates is receivable in evidence.

Stowell v. Overseers, etc. 5 Denio, 598; Roy v. Targee, 7 Wend. 358.

§ 865. Court may affirm, vacate or modify the order or adjourn the hearing till the bastard be born.— The court may affirm or vacate an order of filiation or maintenance, or may reduce or increase the sum ordered to be paid for the support of the bastard or its mother; and, disregarding defects in form in the order, must amend it according to the fact. If, when the appeal is heard, the bastard be not born, the court may adjourn the hearing, until it be born, and in that case, must take an undertaking from the party appealing, for his appearance, in such sum and with such sureties as the court may deem sufficient.

Attorney can not be surety. Rule 5, Sup. Ct.

§ 866. If woman be not pregnant, etc., defendant to be discharged. — If the woman alleged to be pregnant, be not so, or be married before her delivery, or the child be not born alive, the defendant must be discharged from custody, or from the obligation of his undertaking, either by the court or magistrates, upon that fact being made to appear.

§ 867. Order of the court, on affirmance. — If, upon the hearing of the appeal, the court of sessions affirm an order of filiation or maintenance, it must require the defendant to enter into an undertaking, with sufficient sureties, approved by the court, to the effect that he will pay weekly or otherwise, according to the order as made by the magistrate* or modified by the court, the sum directed for the support of the bastard, and of the mother during her confinement and recovery; and that he will indemnify the county, and town or city where the bastard was or may be born (as the case may be), and every other county, town or city, which may have been put to expense for the support of the child, or of its mother during her confinement and recovery, against those expenses, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court.

People ex rel. Fuller v. Carney, 29 Hun, 47; 1 N. Y. Cr. 270.

§ 868. Commitment of defendant, if he fail to give undertaking. — If on judgment of affirmance, the defendant do not enter into an undertaking, as provided in the last section, he must be committed to the county jail, or in the city of New York, to the city prison of of that city, until he do so, or be discharged by the court.

* So in the original.

§ 869. **Undertaking for appearance on appeal, when forfeited.**— The undertaking for the appearance of the defendant, at the court of sessions, upon an appeal, is forfeited, by his neglect to appear, or to give the undertaking mentioned in the last two sections, unless he be discharged by the court.

Departing without leave after appearance forfeits bond. People *v.* Jayne, 27 Barb. 58.

§ 870. **When mother bound to appear at the sessions, court to proceed as upon an appeal.**— When the mother of a bastard is bound to appear at the court of sessions, or is committed as provided in section 858, the court must proceed in respect to the matter, in the same manner as upon an appeal.

§ 871. **When the court may make an order against the mother, for the support of the bastard.**— If the court be satisfied that the mother has property in her own right, sufficient to enable her to support the bastard or contribute to its support, it must confirm the order mentioned in section 857, or may vary the sum ordered to be paid weekly or otherwise; or if not, it must discharge her from custody or from the obligation of her undertaking.

§ 872. **Proceedings against the mother, on affirmance or modification of the order, etc.**— If the court affirm or modify the order, as provided in the last section, it must require the defendant to enter into an undertaking, with sufficient sureties approved by the court, to the effect that she will pay, weekly or otherwise, according to the order, as made by the magistrates or modified by the court, the sum directed for the support of the bastard, or that the sureties will do so, not exceeding the sum mentioned in the undertaking, and which must be fixed by the court. If the undertaking be not given she must be committed in the manner provided in section 868.

§ 873. **Costs on appeal, when awarded and how paid.**— The court must award costs to the party in whose favor an appeal is determined. When awarded against county superintendents or overseers of the poor of a town, not liable for the support of its own poor, they must be paid by the county treasurer, on delivering to him a certified copy of the order and of the taxed costs, and must be charged by him to the town in the same county, liable to support the bastard, or if there be none, to the county. In the city of New York, when costs are awarded upon an appeal, to the person charged as the father or mother of the bastard, they must, upon the production of similar vouchers, be paid by the comptroller of that

city, and charged to the appropriation made to the commissioners of charities and corrections thereof.

Mayham v. Allen, 50 Hun, 343; Fellows v. Lane, 67 How. 435.

§ 874. Id.— In other cases, the payment of the costs may be enforced by the court, as in a civil action. If the party against whom they are awarded, reside out of the jurisdiction of the court, an action may be brought on the order, by the party entitled to the costs, in which the production of a certified copy of the order and of the taxed costs, is conclusive evidence.

§ 875. When order of filiation vacated, etc.— If the court vacate an order of filiation, for any other cause than upon the merits, it must proceed, and may make an original order of filiation, in the manner prescribed in the second subdivision of section 850, or bind the person charged, in an undertaking, in a sum and with sureties approved by the court, to appear at the next court of sessions.

§ 876. If order of filiation be vacated, except on the merits, magistrates may proceed anew.— If the order be vacated for any other cause than on the merits, and the person charged be bound as provided in the last section, the same proceedings may be had by the magistrate, for the apprehension of the defendant, and for making an order of filiation, and for the commitment of the defendant for not giving an undertaking, as are authorized in the first instance. And the same proceedings must be subsequently had, in all respects.

§ 877. Court to inquire into circumstances of father or mother, committed for not giving undertaking, etc.— When a person is committed to prison, charged as the father of a bastard, or of a child likely to be born a bastard, and when the mother of a bastard is so committed, for not giving an undertaking to support the bastard, or to indemnify the public, the court must inquire, from time to time, into the circumstances and ability of the father or mother, to support the bastard and to procure security therefor.

§ 878. Father or mother unable to support the bastard, may be discharged.—If the court be at any time satisfied that the father or mother is wholly unable to support the bastard, or to contribute to its support, or to procure security therefor, it may, in its discretion, order the father or mother to be discharged from imprisonment.

§ 879. Notice before discharge, etc.—Before granting the order, the court must be satisfied that reasonable notice has been given to

the overseers of the poor, or to the county superintendents, or chief officers of the alms-house, at whose instance the party was committed, of the intention to apply for a discharge, and must hear the allegations and proofs of the superintendents, overseers or officers, and may examine the party applying on oath respecting the subject of the application.

§ 880. **Party can not be discharged, but by the court.**—A person committed, as provided in section 877, can not be discharged from imprisonment, except by the court of sessions of the county.

CHAPTER III.

ENFORCEMENT OF THE UNDERTAKING FOR THE SUPPORT OF THE BASTARD OR ITS MOTHER, OR FOR APPEARANCE ON APPEAL.

SEC. 881. Court to order prosecution of undertaking when forfeited; by whom prosecuted.
882. In whose name undertaking to be prosecuted.
883. Evidence in the action, and measure of damages.
884. For a subsequent breach of the undertaking, new action may be brought.
885. Costs, how recovered, when awarded against the plaintiff.
886. Action may be maintained on the order of the magistrates or court.

§ 881. **Court to order prosecution of undertaking, when forfeited; by whom prosecuted.**—If an undertaking for the appearance at the court of sessions, of a person charged as the father or mother of a bastard, be forfeited, the court may order it to be prosecuted; and the sum mentioned therein may be recovered, and when collected, must, except in the city of New York, be paid to the county treasurer, and by him credited to the town in the same county, liable to the support of the bastard, or if there be none, to the county. In the city of New York, the court must order the undertaking to be prosecuted by the commissioners of charities and corrections, and when collected, it must be paid into the city treasury. In every other county it must be prosecuted by the district attorney.

People ex rel. Com'rs *v.* Dando, 20 Abb. N. C. 245; Tillotson *v.* Martin, 40 Hun, 322; People *v.* Fleisch, 13 Daly, 39.

§ 882. **In whose name undertaking to be prosecuted.**—When an undertaking to obey an order, in relation to the support of a bastard, or of a child likely to be born a bastard, or of its mother, is forfeited, it may be prosecuted in the name of the county superintendents of the county, or the overseers of the poor of the town, which was liable for the support of the bastard, or which may have incurred any expense in support of the bastard, or of its mother, during her confinement and recovery; or in the city of New York, in the name of the corporation of that city

Order of filiation conclusive, unless appealed from. Wallsworth v. Mead, 9 Johns. 367; People v. Relyea, id. 195; Rockfeller v. Donnelly, 8 Cow. 623; People v. Corbett, 8 Wend. 520; Overseers v. Cox, 7 id. 235. Tillotson v. Martin, 40 Hun, 322.

§ 883. **Evidence in the action, and measure of damages.**—In the action mentioned in the last section, it is not necessary to prove the actual payment of money by a county superintendent, overseer of the poor, officer of an alms-house, or other person; but the neglect to pay a sum ordered to be paid by competent authority, for the support of the bastard, or of its mother, is a breach of the undertaking, and the measure of the damages is the sum ordered to be paid, and which was withheld at the time of the commencement of the action, with interest thereon.

People v. Corbett, 8 Wend. 520; Rockfeller v. Donnelly, 8 Cow. 623; People v. Haddock, 12 Wend. 475. Money may be recoved back if mother not pregnant. Rheel v. Hicks, 25 N. Y. 289. Tillotson v. Martin, 40 Hun, 322.

§ 884. **For a subsequent breach of the undertaking, new action may be brought.**—For a breach of the undertaking, after the recovery of damages or the commencement of an action, another action may, in the same manner, be brought. The money collected upon the undertaking must be paid, and credited, in the manner provided in section 881.

Tillotson v. Martin, 40 Hun, 322.

§ 885. **Costs, how recovered, when awarded against the plaintiff.**—If, in the action, costs be awarded against the plaintiffs, they may be recovered, as follows:

1. If against the corporation of the city of New York, in the same manner as in any other action;

2. If against county superintendents or overseers of the poor, they must, upon the delivery of a transcript of the judgment, be paid by the county treasurer, and by him charged to the town in the same county, liable for the support of the bastard, or if there be none, to the county.

Taxable costs are to be allowed. Ontario Co. v. Moore, 12 Wend. 273; Washburn v. Overseers, 9 John. 119.

§ 886. **Action may be maintained on the order, etc.**—An action may be maintained by the parties authorized by section 882, upon an order made by two magistrates, or by a court of sessions, for the payment of a sum weekly or otherwise, for the support of the bastard or its mother, notwithstanding an undertaking may have been given to comply with the order; and in case of the death of the person against whom the order was made, an action may be maintained thereon against his executors or administrators. But when

an undertaking is given to appear at the next court of sessions, no action can be brought on the order until it is affirmed by the court.

TITLE VI.

Of Proceedings Respecting Vagrants.

SEC. 887. Who are vagrants.
888. Proceedings before magistrate.
889. Child, how kept.
890. Peace officers, when required by any person, to carry vagrant before a magistrate for examination.
891. Vagrant, when to be convicted. Form of certificate of conviction.
892. Certificate to constitute record of conviction, and to be filed. Commitment of vagrant.
893. Children begging, how disposed of.
894. Peace officers to arrest and pursue a person disguised, and take him before a magistrate.
895. Private citizen may do so, without warrant.
896. Peace officer may require aid. Duty of persons required to aid him.
897. Neglect or refusal to aid peace officer, without lawful cause, a misdemeanor. Punishment.
898. Magistrate may depute an elector of the county to make arrest of person disguised. If his name be not known, fictitious name may be used.

§ 887. **Who are vagrants.**—The following persons are vagrants:

1. A person who, not having visible means to maintain himself, lives without employment;

2. A person who, being an habitual drunkard, abandons, neglects, or refuses to aid in the support of his family;

3. A person who has contracted an infectious or other disease, in the practice of drunkenness or debauchery, requiring charitable aid to restore him to health;

4. A common prostitute, who has no lawful employment, whereby to maintain herself;

5. A person wandering abroad and begging, or who goes about from door to door, or places himself in the streets, highways, passages, or other public places, to beg or receive alms;

6. A person wandering abroad and lodging in taverns, groceries, ale-houses, watch or station-houses, out-houses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and not giving a good account of himself;

7. A person, who, having his face painted, discolored, covered or concealed, or being otherwise disguised, in a manner calculated to prevent his being identified, appears in a road or public highway, or in a field, lot, wood or inclosure;

8. Any child between the age of five and fourteen, having sufficient bodily health and mental capacity to attend the public schools, found wandering in the streets or lanes of any city or incorporated village, a truant, without any lawful occupation.

Matter of Forbes, 19 How. Pr. 457; 11 Abb. 52; Matter of Moses, 13 Abb. N. C. 190; 1 N. Y. Cr. 508; 66 How. 297; Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 285; People ex rel. Van Heck v. N. Y. Cath. Proectory, 101 N. Y. 202; 4 N. Y. Cr. 85; 3 How. (N. S.) 350; People ex rel. Mt. Magdalen v. Dickson, 57 Hun, 312, 316; Portland v. Bangor, 65 Me. 120; 20 Am. Rep. 681; State v. Glenn, 54 Md. 572.

§ 888. **Proceedings before magistrate.**—When complaint is made to any magistrate by any citizen or peace officer against any vagrant under subdivision eight of the last section, such magistrate must cause a peace officer to bring such child before him for examination, and shall also cause the parent, guardian or master of such child, if the child has any, to be summoned to attend such examination. If thereon the complaint shall be satisfactorily established, the magistrate must require the parent, guardian or master to enter into an engagement in writing to the corporate authorities of the city or village, that he will restrain such child from so wandering about, will keep him in his own premises, or in some lawful occupation and will cause him to be sent to some school at least four months in each year until he becomes fourteen years old. The magistrate may, in his discretion, require security for the faithful performance of such engagement. If the child has no parent, guardian or master, or none can be found, or if the parent, guardian or master refuse or neglect, within a reasonable time, to enter into such engagement, and to give such security, if required, the magistrate shall *make the like disposition of such child as is authorized to be made by section two hundred and ninety-one of the Penal Code, of children coming within the descriptions therein mentioned.* [AM'D CH. 220 OF 1888.]

People ex rel. M. Magdalen, etc. v. Dickson, 57 Hun, 312, 316.

§ 889. Repealed by § 5, chap. 220 of 1888.

§ 890. **Peace officers when required by any person, etc.**—A peace officer must, when required by any person, take a vagrant before a justice of the peace or police justice of the same city, village or town, or before the mayor, recorder, or city judge, or judge of the general sessions of the same city, for the purpose of examination.

See People ex rel. Kingsley v. Pratt, 22 Hun, 300.

§ 891. **Vagrant, when to be convicted; form of certificate of conviction.**—If the magistrate be satisfied, from the confession of the person so brought before him, or by competent testimony, that he is a vagrant, he must convict him, and must make and sign, with his name of office, a certificate in substantially the following form:

"I certify that A. B., having been brought before me, charged with being a vagrant, I have duly examined the charge, and that

upon his own confession in my presence [or 'upon the testimony of C. D.,' etc., naming the witnesses], by which it appears that he is a person [pursuing the description contained in the subdivision of section 887, which is appropriate to the case], I have adjudged that he is a vagrant.

"Dated at the *town* [or city] of , the day of , 18 .

"E. F.,

"Justice of the peace of the town of ,"

[or as the case may be.]

What is a confession. Bennac *v.* People, 4 Barb. 164.

§ 892. **Certificate, etc., to be filed. Commitment of vagrants.**— The magistrate must immediately cause the certificate, which constitutes the record of conviction, to be filed in the office of the clerk of the county, and must by a warrant, signed by him with his name of office, commit the vagrant, if not a notorious offender, and a proper object for such relief, to the county poor-house if there be one, or to the alms-house or poor-house of the city, village or town, for not exceeding six months, at hard labor, or if the vagrant be an improper person to be so committed, he must be committed for a like term, to the county jail, or in the city of New York, to the city prison or penitentiary of said city, or in the county of Kings to the penitentiary of that county. *In those counties of the state where the distinction between county poor and town poor is maintained, the expense of the conviction and maintenance during the confinement of any vagrant committed to any one of the places of confinement above specified, who shall at the time of such commitment have obtained a legal settlement in one of the towns of the county in which said persons shall be convicted, shall be a charge upon the town where they may reside at the time of such commitment.* [AM'D CH. 657 OF 1886.]

In re John Wacher, 62 How. Pr. 352; People *v.* Coffee, 62 Id. 445; Matter of Waters, 66 Id. 173; Matter of Dorfman, 21 Abb. N. C. 297; People ex rel Whetlock *v.* Baker, 10 Id. 210.

§ 893. Repealed by section 5, chapter 220 of 1888.

See People ex rel. Van Heck *v.* N. Y. Cath. Protectory, 101 N. Y. 202; 4 N. Y. Cr. 85; 3 How. (N. S.) 350.

§ 894. **Peace officers to arrest and pursue a person disguised, etc.**— It is the duty of every peace officer of the county, city, village or town, where a person described in the seventh subdivision of section 887 is found, to arrest and take him before a magistrate mentioned in section 888, to be proceeded against as a vagrant.

§ 895. Private citizen may do so without warrant.— A private citizen of the county may also, without warrant, exercise the powers conferred upon a peace officer by the last section.

§ 896. Peace officer may require aid, etc.— In the execution of the duties imposed by section 894, the peace officer may command the aid of as many male inhabitants of his county, city, village or town, as he may think proper; and a citizen so commanded, may provide himself or be provided, with such means and weapons as the officer giving the command may designate.

§ 897. Neglect to aid peace officer, etc., a misdemeanor; punishment.— A person commanded to aid the officer, as prescribed in the last section, and who without lawful cause refuses or neglects to do so, is guilty of a misdemeanor, and is punishable by a fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding one year, or both.

§ 898. Magistrate may depute an elector of the county to make arrest, etc.; if his name be not known, fictitious name may be used.— A magistrate to whom complaint is made against a person charged as a vagrant, as described in the seventh subdivision of section 887, may, by a warrant, signed by him with his name of office, depute an elector of the county to arrest and bring the vagrant before him, to answer the complaint; and if the name of the person complained of be not known, he may be described in the warrant and in all subsequent proceedings thereon, by a fictitious name.

TITLE VII.

Of Proceedings Respecting Disorderly Persons.

SEC. 899. Who are disorderly persons.
900. On complaint, warrant to be issued.
901. On confession or proof that he is a disorderly person, security to be required.
902. If security given, defendant to be discharged. If not, to be convicted. Form of certificate.
903. Certificate, to constitute record of conviction, and to be filed Commitment thereon.
904. Undertaking, when forfeited.
905. How prosecuted, and proceeds how applied.
906. When new security may be required, or defendant committed after recovery on undertaking.
907. Defendant committed for not giving security, how discharged.
908. Keeper of prison, to return list of disorderly persons committed to court of sessions.
909. Examination of the case by the court
910. Court may discharge, or authorize the binding out of disorderly person.
911. Court may also commit him to prison. Nature and duration of imprisonment.

SEC. 912. Order to procure materials and implements, and to compel him to work.
913. Expense of materials or implements, how paid for, and proceeds of labor, how disposed of.

People ex rel. Sherrer v. Walsh, 67 How. 484.

§ 899. **Who are disorderly persons.**— The following are disorderly persons:

1. Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means;

2. Persons who threaten to run away, and leave their wives or children a burden upon the public;

3. Persons pretending to tell fortunes, or where lost or stolen goods may be found;

4. Keepers of bawdy houses or houses for the resort of prostitutes, drunkards, tipplers, gamesters, habitual criminals, or other disorderly persons;

5. Persons who have no visible profession or calling, by which to maintain themselves, but who do so, for the most part, by gaming;

6. Jugglers, common showmen and mountebanks, who exhibit or perform for profit, puppet shows, wire or rope dancers, or other idle shows, acts or feats;

7. Persons who keep, in a public highway or place, an apparatus or device for the purpose of gaming, or who go about exhibiting tricks or gaming, therewith;

8. Persons who play, in a public highway or place, with cards, dice or any other apparatus or device for gaming;

9. Habitual criminals within the provisions of this Code.

People v. Douglass, 1 N. Y. Cr. 413. Sub. 1. People v. Walsh, 2 id. 335; People v. Walsh, 33 Hun, 345. Sub. 4. People v. Sadler, 97 N. Y. 146. People v. Cutler, 28 Hun, 465; Lutes v. Shelley, 40 Hun, 199; Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 285; People v. Cutler, 28 Hun, 465; 1 N. Y. Cr. 178, People v. Grimshaw, 2 id. 396; People v. Miller, 38 Hun, 84; 3 N.Y. Cr. 480; People v. Klock, 48 Hun, 277; Bulkley v. Boyce, id. 261; People v. Carroll, 3 Park. 73; Bennac v. People, 4 Barb. 164; People ex rel. Van Houton v. Sadler, 97 N. Y. 146; 3 N. Y. Cr. 471; People ex rel. Balch v. Strickland, 13 Abb. N. C. 473; People ex rel. Healey v. Forbes, 52 Hun, 32; Blitz v. Toovey, 28 N. Y. St. Rep. 162; People v. Harris, 38 id. 316; Breichbiel v. Powles, 39 id. 857; People v. Ehrsam, 41 id. 625. See 3 Dem. 124.

§ 900. **On complaint, warrant to be issued.**— Upon complaint on oath, to a justice of the peace or police justice of a city, village or town, or to the mayor, recorder, city judge or judge of the general sessions of a city, against a person, as being disorderly, the magistrate must issue a warrant, signed by him, with his name of office, requiring a peace officer to arrest the defendant, and bring him before the magistrate for examination.

Potter v. McAlpine, 3 Dem. 124; People ex rel. Scherer v. Walsh, 2 N. Y. Cr. 327; Com'rs, etc. v. Hammill, 33 Hun, 348; Bulkley v. Boyce, 48 id. 261; People ex rel. Lichtenstein v. Hodgson, 35 N. Y. St. Rep. 982; aff'd, 126 N. Y. 647; People v. Ehrsam, 41 N. Y. St. Rep. 625.

§ 901. **On confession or proof that he is a disorderly person, security to be required.**— If the magistrate be satisfied, from the confession of the defendant, or by competent testimony, that he is a disorderly person, he may require that the person charged give security, by a written undertaking, with one or more sureties approved by the magistrate, to the following effect:

1. If he be a person described in the first or second subdivision of section 899, that he will support his wife and children, and will indemnify the county, city, village or town, against their becoming, within one year, chargeable upon the public;

2. In all other cases, that he will be of good behavior for the space of one year;

Or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrate.

Not entitled to jury trial. Duffy v. People, 1 Hill, 355, id.; 6 id. 75. See Bennac v. People, 4 Barb. 164; 23 Wend. 48. Potter v. McAlpine, 3 Dem. 124; Matter of MaMahon, 1 N. Y. Cr. 58; 64 How. 285; Lutes v. Shelley, 40 Hun, 197; Com'rs, etc. v. Hammill, 33 id. 348; Buckley v. Boyce, 48 id. 261; People v. Carrol, 3 Park. 73; People v. Harris, 38 N. Y. St. Rep. 316; Breichbiel v. Powles, 39 id. 857; People v. Ehrsam, 41 id. 625.

§ 902. **If security given, defendant to be discharged; if not, to be convicted, form of certificate.**— If the undertaking be given, the defendant must be discharged. But if not, the magistrate must convict him as a disorderly person, and must make and sign with his name of office, a certificate in substantially the following form:

"I certify, that A. B., having been brought before me charged with being a disorderly person, I have duly examined the charge, and that upon his own confession in my presence [or 'upon the testimony of C. D.,' etc., naming the witnesses], by which it appears that he is a [pursuing the description contained in the subdivision of section 899, which is appropriate to the case], I have adjudged that he is a disorderly person.

"Dated at the *town* [or 'city'] of ———, the day of , 18 .

"E. F.,
Justice of the peace of the town
of ," [or as the case may be].

Com'rs, etc., v. Hammill, 33 Hun, 348; Potter v. McAlpine, 3 Dem. 124; People ex rel. Van Houton v. Sadler, 97 N Y. 147; 3 N. Y. Cr. 473; People v. Ehrsam, 41 N. Y. St. Rep. 625.

§ 903. **Certificate, to constitute record of conviction, and to be filed; commitment thereon.**— The magistrate must immediately

cause the certificate, which constitutes the record of conviction, to be filed in the office of the clerk of the county, and must, by a warrant signed by him, with his name of office, commit the defendant to the county jail, or in the city of New York to the city prison or penitentiary of that city, or in the county of Kings to the penitentiary of that county, for not exceeding six months at hard labor, or until he give the security prescribed in section 901.

In re John Wacher, 62 How. P. R. 352; People v. Coffee, id. 445. Form. 2 Edm. S. C. 381. Potter v. McAlpine, 3 Dem. 124; People ex rel. Van Houton v. Sadler 97 N. Y. 147; 3 N. Y. Cr. 473; Matter of Trimble, 62 How. 61; People v. Ehrsam, 41 N. Y. St. Rep. 625.

§ 904. **Undertaking, when forfeited.**— The undertaking mentioned in section 901 is forfeited, by the commission of any of the acts which constitute the person by whom it was given a disorderly person, and in the case of a person described in the seventh and eighth subdivisions of section 899, by his playing or betting, at one time or setting, for money or property exceeding the value of two dollars and fifty cents.

Potter v. McAlpine, 3 Dem. 124; Bulkley v. Boyce, 48 Hun, 262; Breichbie v. Powles, 39 N. Y. St. Rep. 357; People v. Ehrsam, 41 id. 625.

§ 905. **How prosecuted, and proceeds how applied.** — When an undertaking is forfeited, it may be prosecuted in the name of the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, in the name of the corporation of that city, and the sum collected in the action must be paid into the county or city treasury, as the case may be, for the benefit of the poor.

It it no defense to the action that there has been no expense incurred. People v. Petit, 3 Hun, 416. Lutes v. Shelley, 40 Hun, 198.

§ 906. **When new security may be required, or defendant committed, etc.** — Upon a recovery on the undertaking, the court in which it is had may require from the defendant new security, in the manner provided in section 901, or if he fail to give it, may commit him in the manner provided in section 903.

Lutes v. Shelley, 40 Hun, 198.

§ 907. **Denfendant, etc., how discharged.** — A person committed as a disorderly person, on failure to give security, may be discharged by any two justices of the peace or police justices, *or the county judge of the county*, upon giving security, as originally required, pursuant to section 901. [AM'D CH. 394 OF 1884.]

People ex rel. Van Houton v. Sadler, 97 N. Y. 147; 3 N. Y. Cr. 473.

§ 908. **Keeper of prison, to return list of disorderly persons, etc.** — The keeper of every prison to which disorderly persons may be

committed, must return to the court of sessions of the county, on the first day of each term, a list of the persons so committed and then in his custody, with the nature of the offense of each, the name of the magistrate by whom he was committed, and the term of his imprisonment.

§ 909. **Examination of the case by the court.**—The court of sessions must thereupon inquire into the circumstances of each case, and hear any proof that may be offered, and must examine the record of conviction, which is evidence of the facts contained in it, until disapproved.

§ 910. **Court may discharge, or authorize the binding out of disorderly person.**—The court may discharge a person so committed from imprisonment, either absolutely or upon his giving security as provided in section 901, or if he be a minor, may authorize the county superintendents of the poor, or the overseers of the poor of the town, or in the city of New York, commissioners of charities and corrections, to bind him out in some lawful calling as a servant, apprentice, mariner or otherwise, until he be of age; or if he be of age, to contract for his service with any person, as a laborer, servant, apprentice, mariner or otherwise, for not exceeding one year. The binding out or contract, pursuant to this section, has the same effect as the indenture of an apprentice, with his own consent and that of his parents, and subjects the person bound out or contracted, to the same control of his master and of the court of sessions of the county, as if he were bound as an apprentice.

People ex rel. Van Houton v. Sadler, 97 N. Y. 147; 3 N. Y. Cr. 473.

§ 911. **Court may also commit him to prison; nature and duration of imprisonment.**—The court may also, in its discretion, order a person convicted as a disorderly person, to be kept in the county jail, or in the city of New York, in the city prison or penitentiary of that city, for a term not exceeding six months at hard labor.

§ 912. **Order to procure materials and implements, and to compel him to work.**—If there be no means provided in the prison, for employing the offender at hard labor, the court may direct the keeper to furnish him such employment as it may specify, and for that purpose, to purchase materials and implements, not exceeding a prescribed value, and to compel the offender to perform the work allotted to him. The expenses incurred in carrying the order into effect, must be paid to the keeper by the county treasurer, upon the delivery to him of the order of the court, and an account under the oath of the keeper, of the materials and implements furnished.

§ 913. Expenses, etc., how paid for, etc.—The keeper must sell the produce of the labor of the offender, and must account for the cost of the materials or implements purchased, and for one-half of the surplus to the board of supervisors, and pay it into the county treasury, and pay the other half of the surplus to the person by whom it was earned on his discharge from imprisonment. He must also account to the court, when required, for the materials or implements purchased, and for the disposition of the proceeds of the labor of the offender.

TITLE VIII.

Of Proceedings Respecting the Support of Poor Persons.

SEC. 914. Who may be compelled to support poor relatives.
915. Order to compel a person to support a poor relative, by whom and how applied for, to court of sessions.
916. Court to hear the case, and make order of support.
917. Support, when to be apportioned among different relatives.
918. Order, to prescribe time during which support is to continue, or may be indefinite. When and how order may be varied.
919. Costs, by whom to be paid, and how enforced.
920. Action on the order, on failure to comply therewith.
921. Parents leaving their children chargeable to the public, how proceeded against
922. Seizure of their property. Transfer thereof, when void.
923. Warrant and seizure, when confirmed or discharged. Direction of the court thereon.
924. Warrant, in what cases to be discharged.
925. Sale of the property seized, and application of its proceeds.
926. Powers of superintendents of poor.

§ 914. Who may be compelled to support poor relatives.—The father, mother and children, of sufficient ability, of a poor person who is insane, blind, old, lame, impotent or decrepid, so as to be unable by work to maintain himself, must at their own charge, relieve and maintain him in a manner to be approved by the overseers of the town where he is, or in the city of New York, by the commissioners of charities and corrections.

A grand-child is liable to support grand-parents. Ex parte Hunt, 5 Cow. 284. Husband not bound to maintain wife's bastard children born before marriage. Minden *v.* Cox, 7 Cow. 225. Who are paupers. Norton *v.* Rhodes, 18 Barb. 100 See Stevens *v.* Cheney, 36 Hun, 1; Edwards *v.* Davis, 16 John. 281; Stone *v* Burgess, 47 N. Y. 521; 2 Lans. 439; Tillotson *v.* Smith, 12 N Y. St. Rep. 333; Herendeen *v.* De Witt, 49 Hun, 53; Ulrich *v.* Ulrich, 42 N. Y. St. Rep. 217; Tillotson *v.* Martin, 40 Hun, 316.

§ 915. Order to compel a person to support a poor relative, etc. If a relative of a poor person fail to relieve and maintain him, as provided in the last section, the overseers of the poor of the town where he is, or in the city of New York, the commissioners of charities and corrections may apply to the court of sessions of the county where the relative dwells, for an order to compel such relief, upon at least ten days' written notice, served personally, or by leaving it

at the last place of residence of the person to whom it is directed, in case of his absence, with a person of suitable age and discretion.

Necessity of a previous order, before applying to court, *Quære*. Anon, 3 N. Y. Leg. Obs. 354; Stevens *v.* Cheney, 36 Hun 3.

§ 916. **Court to hear the case, and make order of support.**—At the time appointed in the notice, the court must proceed summarily to hear the allegations and proofs of the parties, and must order such of the relatives of the poor person, mentioned in section 914, as were served with the notice and are of sufficient ability, to relieve and maintain him, specifying in the order the sum to be paid weekly for his support, and requiring it to be paid by the father, or if there be none, or if he be not of sufficient ability, then by the children, or if there be none, or if they be not of sufficient ability, then by the mother.

§ 917. **Support, when to be apportioned, etc.**—If it appear that any such relative is unable wholly to maintain the poor person, but is able to contribute toward his support, the court may direct two or more relatives, of different degrees, to maintain him, prescribing the proportion which each must contribute for that purpose; and if it appear that the relatives are not of sufficient ability wholly to maintain him, but are able to contribute something, the court must direct the sum, in proportion to their ability, which they shall pay weekly for that purpose.

See Stone *v.* Burgess, 2 Lans. 439; 47 N. Y. 521.

§ 918. **Order, to prescribe time during which support is to continue, etc.; when and how it may be varied.**—The order may specify the time during which the relatives must maintain the poor person, or during which any of the sums directed by the court are to be paid, or it may be indefinite, or until the further order of the court. The court may from time to time vary the order, as circumstances may require, on the application either of any relative affected by it, or of an officer on whose application the order was made, upon ten days' written notice.

§ 919. **Costs, by whom to be paid, and how enforced.**—The costs and expenses of the application must be ascertained by the court, and paid by the relatives against whom the order is made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by attachment.

§ 920. **Action on the order on failure to comply therewith.**—If a relative, required by an order of the court, to relieve or main-

tain a poor person, neglect to do so in the manner approved by the officers mentioned in section 914, and neglect to pay to them weekly the sum prescribed by the court, the officers may maintain an action against the relative, and recover therein the sum prescribed by the court, for every week the order has been disobeyed, to the time of the recovery, with costs, for the use of the poor. In the city of New York, the action must be in the name of the corporation of that city.

What is a breach of the order. Converse *v.* McArthur, 17 Barb. 410. Duel *v.* Lamb, 1 T. & C. 66.

§ 921. **Parents leaving their children chargeable, etc.**— When the father, or the mother being a widow or living separate from her husband, absconds from the children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public, the officers mentioned in section nine hundred and fourteen may apply to any two justices of the peace or police justices in the county in which any real or personal property of the father, mother or husband is situated, for a warrant to seize the same. Upon due proof of the facts, the magistrate must issue his warrant, authorizing the officers so applying to take and seize the property of the person so absconding. *Whenever any child shall be committed to an institution pursuant to any provision of the Penal Code, any magistrate may issue a warrant for the arrest of the father of the child, and examine into his ability to maintain such child in whole or in part; and if satisfied that such father is able to contribute towards the support of the child, then the magistrate shall, by order require the weekly payment by such father of such sum, and in such manner as such magistrate shall, in said order direct towards the maintenance of such child in such institution, which amount when paid shall be credited by the institution to the city, town, or county against any sums due to it therefrom on account of the maintenance of the child.* [AM'D CH. 220 OF 1888.]

Downing *v.* Rugar, 21 Wend. 178; People ex rel. Read *v.* Overseers, etc. 23 Barb. 236; People ex rel. Mt. Magdalen School *v.* Dickson, 57 Hun, 315.

§ 922. **Seizure of their property; transfer thereof, when void.**— The officers so applying may seize and take the property, wherever it may be found in the same county; and are vested with all the right and title thereto, which the person absconding then had. The sale or transfer of any personal property, left in the county from which he absconded, made after the issuing of the warrant, whether in payment of an antecedent debt or for a new consideration, is absolutely void. The officers must immediately make an inventory of the property seized by them, and return it, together with their

proceedings, to the next court of sessions of the county where they reside, there to be filed.

§ 923. Warrant and seizure, when confirmed or discharged, etc.—The court, upon inquiring into the circumstances of the case, may confirm or discharge the warrant and seizure; and if it be confirmed, must, from time to time, direct what part of the personal property must be sold, and how much of the proceeds of the sale, and of the rents and profits of the real property, if any, are to be applied toward the maintenance of the children or wife of the person absconding.

Court to inquire into the merits. People *v.* Overseers, etc. 23 Barb. 236.

§ 924. Warrant, in what cases to be discharged.—If the party against whom the warrant issued, return and support the wife or children so abandoned, or give security satisfactory to any two justices of the peace, or police justices in the city, village or town, to the overseers of the poor of the town, or in the city of New York, to the commissioners of charities and corrections, that the wife or children so abandoned shall not be chargeable to the town or county, then the warrant must be discharged by an order of the magistrates, and the property taken by virtue thereof restored to the party.

§ 925. Sale of the property seized, and application of its proceeds.—The officers must sell at public auction the property ordered to be sold, and receive the rents and profits of the real property of the person absconding, and in those cities, villages or towns which are required to support their own poor, the officers charged therewith must apply the same to the support of the wife or children so abandoned; and for that purpose must draw on the county treasurer, or in the city of New York, upon the comptroller, for the proceeds as directed by special statutes. They must also account to the court of sessions of the county, for all money so received by them, and for the application thereof, from time to time, and may be compelled by that court to render that account at any time.

§ 926. Powers of superintendents of poor.—In those counties where all the poor are a charge upon the county, the superintendents of the poor are vested with the same powers, as are given by this title to the overseers of the poor of a town, in respect to compelling relatives to maintain poor persons, and in respect to the seizure of the property of a parent absconding and abandoning his family; and are entitled to the same remedies in their names, and must per-

form the duties required by this title, of overseers, and are subject to the same obligations and control.

Tillotson v. Smith, 12 N. Y. St. Rep. 322; Norton v. Rhodes, 18 Barb. 100.

TITLE IX.

Of Proceedings respecting Masters, Apprentices and Servants.

SEC. 927. Complaint against apprentice or servant, for absenting himself, or refusing to serve, or for a misdemeanor or ill behavior.
928. Warrant, when complaint is made in the absence of the defendant.
929. Warrant, by whom and how executed.
930. Hearing the complaint, and committing or discharging the defendant.
931. Complaint against the master, for cruelty, misusage or violation of duty.
932. Hearing the complaint and dismissing it or discharging the apprentice or servant.
933. Preceding sections, not applicable to apprentice with whom money is received or agreed for.
934. Complaint against master in such case, and direction thereon.
935. If complaint not compromised, the master to be held to appear at sessions.
936. Proceedings thereon and order of the court.
937. Complaint by master against clerk or apprentice, where money is paid or agreed for. Clerk or apprentice, when held to appear at sessions.
938. Proceedings thereon, and order of the court.
939, 940. Indenture or contract of service, how assigned or death of master.

§ 927. Complaint against apprentice or servant, etc.— If an apprentice or servant, lawfully bound to service as prescribed by special statutes, willfully absent himself therefrom, without the leave of his master, or refuse to serve according to his duty, or be guilty of any misdemeanor or ill behavior, his master may make complaint of the facts under oath, before a justice of the peace or police justice in the county, or before the mayor, recorder or city judge of the city where he resides.

§ 928. Warrant, when complaint is made in the absence of the defendant.— If the complaint be made in the absence of the defendant, and the facts be proved to the satisfaction of the magistrate, he must issue a warrant, signed by him, with his name of office, to a peace officer of the county or city, commanding him to arrest the defendant and bring him before the magistrate forthwith, or at a specified time and place, to answer the complaint.

§ 929. Warrant, by whom and how executed.—The peace officer must accordingly execute the warrant, by arresting the defendant and taking him before the magistrate.

§ 930. Hearing the complaint, etc. — The magistrate must immediately, or at a time to which he may, for good cause adjourn the

matter, proceed to hear the allegations and proofs of the parties, and if the complaint appear to be well founded, must commit the defendant to the county jail, or in the city of New York, to the city prison of that city, for not exceeding one month, at hard labor, where he must be confined in a room with no other person; or may, by a certificate, signed by him with his name or office, discharge the defendant from the service of his master, and the master from all obligations to the defendant.

§ 931. **Complaints against the master, etc.** — If a master be guilty of cruelty, misusage, refusal of necessary provisions or clothing, or any other violation of duty toward his apprentice or servant, as prescribed by special statutes, or by the indenture or contract of service, the apprentice or servant may make complaint on oath, to any of the magistrates mentioned in section 927, who must summon the defendant before him, at a specified time and place.

Killoran *v.* Barton, 26 Hun, 648; 14 W. Dig. 490.

§ 932. **Id; hearing the complaint, etc.** — The magistrate must immediately or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint be well founded, must, by a certificate under his hands, with his name or office, discharge the apprentice or servant from the service of his master; or if not, he must, by a similar certificate, dismiss the complaint.

Killoran *v.* Barton, 26 Hun, 618; 14 W. Dig. 490.

§ 933. **Preceding sections when not applicable, etc.** — The preceding sections of this title do not extend to an apprentice, whose master has received, or is entitled to receive, a sum of money with him, as a compensation for his instruction.

Killoran *v.* Barton, 26 Hun, 648; 14 W. Dig. 490.

§ 934. **Complaint against master in such case, etc.** — Where money is paid or agreed to be paid, on binding out a clerk or apprentice, he may make the complaint mentioned in section 931, and the magistrate to whom it is made must examine it, as provided in section 932, and on such examination, may make such order and direction between the parties, as the justice of the case may require.

Killoran *v.* Barton, 26 Hun, 648; 14 W. Dig. 490.

§ 935. **If complaint not compromised, the master be held to appear at sessions.** — If, in the case mentioned in the last section,

the complaint can not be compromised, the magistrate must take a written undertaking from the master, for his appearance at the next court of sessions of the county, in a sum, and with sureties approved by him.

Killoran *v.* Barton, 26 Hun, 648; 14 W. Dig. 490.

§ 936. **Proceedings thereon, and order of the court.** — Upon hearing the parties, the court may, by an order entered upon the minutes, direct that the clerk or apprentice be discharged from service, and that the money paid or agreed for in binding him out, be refunded, if paid, to the person who advanced it, or his personal representatives, or if not paid, that it be discharged, and that any security given therefor be delivered up or canceled.

§ 937. **Complaint by master against clerk or apprentice, where money is paid or agreed for; clerk or apprentice when held to appear at sessions.** — The master of a clerk or apprentice, where money is paid or agreed for on binding him out, may make the complaint mentioned in section 927, and the magistrate to whom it is made must proceed thereupon, as provided in sections 928 to 930, both inclusive, and may discharge the complaint, or if in his opinion it be well founded, make take a written undertaking, in a sum and with sureties to be approved by him, for the appearance of the clerk or apprentice at the next court of sessions of the county.

§ 938. **Proceedings thereon, and order of the court.** — Upon hearing the parties, the court may proceed as provided in section 936, and may punish the clerk or appretice, by fine or imprisonment, or both, as for a misdemeanor.

§ 939. **Indenture or contract of service, how assigned on death of master.** — Upon the death of a master to whom a person has been bound to service, as clerk, apprentice or servant, by the county superintendents of the poor, or by the overseers of the poor, or in the city of New York by the commissioners of charities and corrections, the personal representatives of the master may, with the written consent of the clerk, apprentice or servant, acknowledged before a justice of the peace or police justice, assign the indenture or contract of service to another, who thereby becomes vested with all the rights of the master.

§ 940. **Id.**—If, in the case mentioned in the last section, the written consent of the clerk, apprentice or servant be refused, the assignment may be made with the same effect, under an order of the court

of sessions of the county, upon fourteen days' notice of the application therefor, to the apprentice, or to his parent or guardian, if there be any in the county.

TITLE X.

Of Criminal Statistics.

SEC. 941. District attorney to furnish statement.
942. Duty of clerk.
943. Same.
944. Same.
945. Sheriff's report.
946. Same.
947. Form of report.
948. Consequence of neglect.
949. Duty of secretary of state.

§ 941. **District attorney to furnish statement.**—Within ten days after the adjournment of any criminal court of record in this state, the district attorney of the county in which the court shall be held, must furnish to the clerk of the court such a description of the offense committed by every person convicted of crime, abridged from the indictment, as would be sufficient to maintain the averments relating to such offense, or necessary to be made in an indictment for a second offense.

§ 942. **Duty of clerk.**—Within twenty days after the adjournment of any criminal court of record, the clerk thereof must transmit to the office of the secretary of state such statement furnished by the district attorney, of all convictions had at such court.

§ 943. **Id.**—Within twenty days after the adjournment of any criminal court of record, the clerk thereof must also transmit to the office of the secretary of state a duly certified statement of the number of indictments tried at such court, specifying the number for each separate offense, the number on which convictions were had, and on which defendants were acquitted, and of indictments against persons who were convicted on confession, and against persons who were discharged without trial.

§ 944. **Id.**—On or before the fifth day of every month, the clerk of each county must transmit to the secretary of state copies of all certificates of convictions made by any court of special sessions, and required by law to be filed with such clerk, and which have been filed in the office of the county clerk during the previous month.

§ 945. **Sheriff's report.**—A report must be made by the sheriff of every county in which there is a city, on the first day of every month to the secretary of state, of the number of persons convicted in city courts, courts of special sessions, and police courts during the preceding month. Such reports must specify the crimes, the whole number convicted, the sex, age, nativity, and whether married or single; the degree of education, religious instruction, whether parents living or dead, temperate or intemperate, and whether before convicted or not of any crime.

§ 946. **Id.**— Within twenty days after the adjournment of any criminal court of record, the sheriff of the county in which such court shall be held, must report to the secretary of state, the name, occupation, age, sex, and native country of every person convicted at such court of any offense, and the degree of instruction which each person so convicted has received, and also such other items of information in relation to such convicts and their offenses, as the secretary of state shall require.

§ 947. **Form of report.**— The report required by this title must be made in the form prescribed by the secretary of state.

§ 948. **Consequence of neglect.**—For every neglect of magistrate, clerk or sheriff to comply with the requirements of this title, he forfeits the sum of fifty dollars, to be recovered in a civil action, in the name of the people of this state.

§ 949. **Duty of secretary of state.**— The secretary of state must cause this title to be published, with forms and instructions for the execution of the duties therein prescribed, and to be distributed among the officers therein mentioned; the expense of which must be paid by the treasurer, on the warrant of the comptroller. He must also annually report to the legislature, the results of the information obtained in pursuance of this title.

TITLE XI.

Miscellaneous Provisions, respecting Special Proceedings of a Criminal Nature.

SEC. 950. Parties to a special proceeding, how designated.
951. Provisions respecting entitling affidavits, applicable.
952. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses.

§ 950. Parties to a special proceeding, how designated. — The party prosecuting a special proceeding of a criminal nature, is designated in this Code, as the complainant, and the adverse party as the defendant.

People ex rel. Scherer *v.* Walsh, 33 Hun, 346; 2 N. Y. Cr. 327; 67 How. 484; Killoran *v.* Barton, 26 Hun, 650.

§ 951. Provisions respecting entitling affidavits, applicable. — The provisions of this Code, in respect to entitling affidavits in a criminal action, are applicable to special proceedings of a criminal nature.

People ex rel. Scherer *v.* Walsh, 33 Hun, 345; 2 N. Y. Cr. 327; 67 How. 484; Com'rs, etc. *v.* Hammill, 33 Hun, 348.

§ 952. Courts and magistrates to issue subpœnas, and punish disobedience of witnesses. — All courts and magistrates having before them special proceedings of a criminal nature, may issue subpœnas for witnesses, and punish their disobedience in the same manner as in criminal actions.

People ex rel. Scherer *v.* Walsh, 33 Hun, 345; 2 N. Y. Cr. 327; 67 How. 484; Com'rs. etc. *v.* Hammill, 33 Hun, 348.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

SEC. 953. Abatement of nuisance.
954. No part of this Code retroactive, unless expressly so declared.
955. Present tense includes future, etc.
956. Definition of "writing."
957. Definition of "oath."
958. Definition of "signature."
959. Definition of "magistrate."
960. Definition of "peace officer."
961. Definition of "court of sessions."
962. To what actions and proceedings this Code applies.
963. When Code to take effect.

§ 953. Abatement of nuisance. — Where a person is convicted of keeping or maintaining a public nuisance, and sentenced to punishment, the court may in its judgment, in addition to or in place of other punishment, direct that the nuisance be abated, and issue an order to the sheriff of the proper county to execute the judgment as therein directed.

Syracuse, etc. Co. *v.* People, 66 Barb. 25; Anderson *v.* Doty, 33 Hun, 163.

§ 954. No part of this Code retroactive, unless expressly so declared. — No part of this Code is retroactive, unless expressly so declared.

§ 955. Present tense includes future, etc.—[Repealed by ch. 677 of 1892.]

§ 956. Definition of "writing."—[Repealed by ch. 677 of 1892.]

§ 957. Definition of "oath."—[Repealed by ch. 677 of 1892.]

§ 958. Definition of "signature."— The term "signature" includes a mark, when the person can not write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer; in which case the attestation of the officer is sufficient.

§ 959. Definition of "magistrate."— Unless when otherwise provided, the term "magistrate" signifies any one of the magistrates mentioned in section 147.

§ 960. Definition of "peace officer."—Unless when otherwise provided, the term "peace officer" signifies any one of the officers mentioned in section 154.

§ 961. Definition of "court of sessions."— The term "court of sessions" includes "the court of general sessions in the city and county of New York," wherever such inclusion does not conflict with other provisions of this Code.

§ 962. To what actions and proceedings this Code applies.— This Code applies to criminal actions, and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect; but all such actions and proceedings, theretofore commenced, must be conducted in the same manner as if this Code had not been passed; except that if in any local statute confined, by its terms, to a town or village or to a county or city other than the city and county of New York, any proceeding is prescribed, in addition to those prescribed by this Code and not inconsistent with it, the same shall remain unaffected by it.

See § 719 of Penal Code. Willett *v.* People, 27 Hun, 471; Ostrander *v.* People, 28 id. 48; 29 id. 513; 1 N. Y. Cr. 274; People ex rel. Sherwin *v.* Mead, 23 N. Y. 415; 28 Hun, 431; 64 How. 41; Com'rs, etc. *v.* Hammill, 33 Hun, 348; People *v.* Holmes, 41 id. 55; 5 N. Y. Cr. 130; Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 285; People *v.* Hovey, 92 N. Y. 558; 1 N. Y. Cr. 282; McKeon *v.* People, 94 N Y. 648; 1 N. Y. Cr. 456; People *v.* Bork, 96 N. Y. 188; 2 N. Y. Cr. 56, 177; People *v.* Beckwith, id. 29; People *v.* Augsburgh, id. 561; People *v.* Sessions, 10 Abb. N. C. 192; 62 How. 415.

§ 963. When Code to take effect.— This Code shall take effect on the first day of September, 1881. When construed in connection with other statutes, it must be deemed to have been enacted on the fourth day of January, eighteen hundred and eighty-one, so that any statute enacted after that day is to have the same effect as if it had been enacted after this Code.

Willett *v.* People, 27 Hun, 470; Matter of McMahon, 1 N. Y. Cr. 58; 64 How. 284; People *v.* Welch, 1 N. Y. Cr. 488; People *v.* Jefferson, 101 N. Y. 20; 3 N. Y. Cr. 575; People *v.* Petrea, 92 N. Y. 128; People *v* Sessions, 10 Abb N. C. 192; 62 How. 415; People ex rel. Van Houton *v.* Sadler, 2 N. Y. Cr. 439; Matter of Ramscar, 1 N. Y. Cr. 33; 10 Abb. N. C. 442; 63 How. 285; Matter of Waters, 66 How. 174.

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FORMS.

No. 1.

§ 12. Articles of Impeachment.

Articles exhibited by the assembly of the state of New York in the name of themselves and all the people of the state of New York, against , a , in maintenance of their impeachment against him for willful and currupt misconduct in his said office of

Article I.

That the said , being a civil officer of the state of New York, to-wit: a , unmindful of the duties of his said office, and in violation of his oath of office, in this, to-wit: that the said , acting in his said office, did

to the great injury of , and to the great scandal and reproach of the people of the state of New York, and their dignity, and more particularly of the said office of

Article II., Etc., Etc.

And the said assembly, saving to themselves by protestation the liberty of exhibiting at any time hereafter any of the articles of impeachment against the said , and also of replying to the answers which he may make to the impeachment aforesaid, and of offering proof of the said matters of impeachment, to demand that the said be put to answer all and every of the said matters, and that such proceedings, trial and judgment may be thereupon had and given as are conformable to the Constitution and laws of the state of New York; and the said assembly are ready to offer proof of the said matters at such time as the honorable court for the trial of impeachments may order and appoint.

By the assembly of the state of New York, in session duly convened at the capitol in the city of Albany, N. Y., this day of , in the year of our Lord, one thousand eight hundred and eighty.

Speaker.
Clerk.
} *Committee.*

No. 2.

§ 17. Summons to the Court for Trial of Impeachment.

The people of the state of New York, by the grace of God free and independent:

To

A judge of the court of appeals of the state of New York (or senator of the state of New York, for the senatorial district thereof), and a member of the court for the trial of impeachments, and to the court for the trial of impeachments, greeting:

The court for the trial of impeachments is hereby summoned to convene and assemble to meet at the capitol in the city of Albany on the day of , 18 , at o'clock in the noon, and you are hereby required and summoned to be and appear in your own proper person, at the time and place above stated, to organize and sit with the said court, upon the trial of certain articles of impeachment then and there to be tried and determined before the said court, which have been made and presented by the assembly of the state of New York to the senate of the state of New York, against , a , for willful and corrupt misconduct in office, and hereof fail not.

Dated at the city of Albany, N. Y., this day of , 18 .

President of the Senate of the State of New York.

No. 3.

§ 18. Oath to Members of Court.

You do solemnly swear (*or affirm*) that you will truly and impartially try and determine according to evidence the article of impeachment preferred against a for willful and corrupt misconduct in office, about to be presented before this court for the trial of impeachments, of which you are a member, for its determination.

No. 4.

§ 20. Writ and Process of Court.

The people of the state of New York, by the grace of God, free and independent:

To greeting:

You and each of you are hereby commanded and required that laying aside all other business, and all pretenses and excuses what-

soever, you be and appear in your own proper persons before our court for the trial of impeachments, at on the day of A. D. 18 , at o'clock M. of that day, to be examined as witnesses, and to testify the truth and give evidence on our behalf (or on behalf of the respondent hereafter named) concerning articles of impeachment then and there to be tried and determined before this court, which have been made against a , and hereof fail not at your peril.

Witness: The Hon. , the president of the senate, this day of , A. D. 18 .

Attest.
Clerk of the Senate.

No. 5.

District Attorney's precept for Oyer and Terminer.

In the name of the people of the state of New York:

To the sheriff of the county of .

[Seal.]

Whereas, a court of oyer and terminer and jail delivery is to be held in and for the county of , at the in the of , on the day of , 18 ;

We command you, in pursuance of the provisions of the Revised Statutes in such case made and provided:

First. That you summon the several persons, who have been drawn in said county of persuant to law to serve as grand jurors and petit jurors at said court, to appear thereat.

Second. That you bring before the said court all prisoners then being in the jail of said county, together with all processes and proceedings in any way concerning them in your hands as such sheriff.

Third. That you make proclamation in the manner prescribed by law, notifying all persons, bound to appear at said court by recognizance or otherwise, to appear thereat, and requiring all justices of the peace, coroners and other officers who have taken any recognizance for the appearance of any person at such court, or who shall have taken any inquisition or examination of any prisoner or witness, to return such recognizance or inquisition and examination to the said court at the opening thereof on the first day of its term.

Witness, , Justice of the Supreme Court, this day of , 18 .

Clerk,

District Attorney.

No. 6.

Proclamation on foregoing precept.

Whereas, a court of oyer and terminer is appoinsted to be held in and for the county of , on the day of , 18 , therefore, proclamation is hereby made, in conformity to a precept to me directed and delivered by the district attorney of county, on the day of , 18 , to all persons, bound to appear at the said court of oyer and terminer by recognizance or otherwise, to appear thereat, and all justices of the peace, coroners and other officers who have taken any recognizances for the appearance of any person at such court, or who have taken any inquisition or the examination of any prisoner or witness, are required to return such recognizance, inquisition or examination at the opening of the first day of said court.

Dated at , this day of , 18

Sheriff of the County of ,

No. 7.

Return to District Attorney's precept.

STATE OF NEW YORK, }
COUNTY OF , } ss.

I have executed the within precept as I am within commanded, by having duly summoned the jurors, drawn for the court mentioned therein, to appear thereat, by making immediate proclamation as therein commanded, and causing the same to be published in a public newspaper printed in said county of once a week from the receipt of said precept until the time appointed for said court, and by having the prisoners in jail brought before the said court, with all processes and proceedings in any way concerning them in my hands.

Dated at , this day of , 18 .

Sheriff of the County of , .

No. 8.

Calendar of Prisoners in Jail.

To the court of , now in session:

I, the undersigned, sheriff of the county of , do hereby certify that the following is a correct list of the prisoners now

detained in the jail of said county, the time when each was committed, by what process and the crime charged.

Name.	Date of Commitment	Process.	Charge.

[Give full list.]

Dated at , this day of , 18 .

Sheriff of the County of

No. 9.

§ 44. Order Removing Indictment.

COURT OF SESSIONS—COUNTY OF

THE PEOPLE OF THE STATE OF NEW YORK against

It appearing to the satisfaction of this court that , county judge of the said county of , is incapable of acting in the above criminal action pending herein, by reason of [here set forth cause.]

It is ordered that the same be and it is hereby transferred to the court of oyer and terminer of the said county of , [or city court, as the case may be.]

No. 10.

§ 45. Order for Sessions.

Terms of the county court and court of sessions of the county of :

I do hereby order and appoint the terms of the county court, and of the court of sessions of the county of , for the year 18 , to be held at the , in the of , and at the times following, viz.:

On the second Monday of January.

On the third Monday of March.

On the third Monday of June.

On the second Monday of September, and

On the second Monday of November.

It is further ordered, that a grand and trial jury be drawn and summoned to attend each of said terms.

Dated, , 18 .

County Judge of the county of .

No. 11.

§ 68. Albany Special Sessions. Order for Bench Warrant.

At a court of special sessions, held at the City Hall, in the city of Albany, on the day of , 18 .

Present — Hon. , Recorder.

THE PEOPLE
vs.

The above named having neglected to appear before this court, agreeably to a recognizance given by him to appear thereat. Now, on motion of , district attorney, it is ordered that a warrant issue for the arrest of said , and directing the officer executing the same to bring the said before this court, if the court be then in session, and if the court is not then in session, that the said officer commit the said to the common jai of Albany county, there to remain until delivered by due course of law.

No. 12.

Id. Bench Warrant.

CITY OF ALBANY,
COURT OF SPECIAL SESSIONS.

To the sheriff of the county of Albany, the constables of the city of Albany, the members of the police force of the city of Albany, and to the special officers of the district attorney of Albany county, and to each of you, and to the keeper of the common jail of the city of Albany:

The people of the state of New York command you to take , who was duly recognized pursuant to law, to appear in our court of special sessions of the city of Albany, to answer to a complaint for triable therein, and who has neglected to appear thereat, agreeably to the requirements of such recognizance, and forthwith bring h before our said court, at the City Hall, in the city of Albany, in said county, if our said court shall be at the time of such arrest in session, together with this warrant; but if the said court be not in session, you are hereby commanded to commit the said

to the common jail of the county of Albany, there to remain till h be delivered by the due course of law.

Witness: Hon. , recorder of the city of Albany, at the City Hall, in the city of Albany, this day of 18 .

, Clerk.

No. 13.

§ 84. Complaint and Examination on Application for Surety of the Peace.

COUNTY OF } ss.

of the of , upon oath complains and informs that of said of , hath threatened to commit a crime against the property of , in that said has threatened to and that hath just reason to fear that the said will commit the said crime threatened. The said therefore prays surety of the peace to be granted against the said , and this doth not from any private malice or ill-will toward the said , but simply because is afraid, and hath good reason to fear that the said will commit the said crime threatened.

Wherefore the said prays that a warrant may issue in due form of law against the said , and that may be dealt with touching the premises as to law and justice shall appertain.

[*Signature.*]

On the day of 18 , the said personally appeared before me, and made oath to the truth of the foregoing complaint and information subscribed by

[*Signature.*]

No. 14.

§ 85. Examination.

COUNTY OF ALBANY, ss.

The examination of and taken upon oath before me, , a justice of said of , on the day of 18 , on complaint and information made before me, by the said against for the purpose of obtaining surety of the peace.

The said on oath aforesaid, before me, saith that on the day of , 18 , at in said

of , did threaten this deponent that would the said

The said on oath aforesaid, before me, saith that was present at the of at the time mentioned in the above examination of , and that heard the said on that occasion make use of the threats above stated in the said examination, and that this deponent hath at various times and on divers occasions within the last months heard the said assert and swear that would the said

Taken before me the day and year first above mentioned.

[*Signature.*]

No. 15.

§ 86. Warrant for Arrest; Security to Keep the Peace.

STATE OF NEW YORK,
COUNTY OF } ss.
OF

In the name of the people of the state of New York:

To the sheriff, constable, marshal, policeman of in said county , greeting:

Whereas, an information has been laid before me, justice of the peace of the of , in and for the said county, under the oath of , in the aforesaid county, that one , of the of , did, on or about the day of , 18 , at the of in said county, threaten to commit the crime of against the person of , and alleging there is just reason to fear the commission of said threatened crime, and further praying that a warrant issue for the arrest of said accused, and that he be dealt with pursuant to the provisions of the Code of Criminal Procedure, and after examining on oath said complainant and reducing h examination to writing and caused the same to be duly subscribed; by which examination it appears that there is just reason to fear the commission of the crime threatened by said

These are, therefore, to command you forthwith to arrest the said , so complained of, and to bring h before me, at my office in the of , within

said , to answer unto the matters contained in said information, and to be further dealt with according to law.

Given under my hand, at the of , in said county, this day of , 18 .

[*Signature.*]

No. 16.

§ 86. Warrant for Surety of the Peace on Threat to Commit a Crime against Property.

COURT } ss.
COUNTY OF

In the name of the people of the state of New York:

To any peace officer, the sheriff, constable, marshal or policeman of the town of in said county of , greeeting:

Whereas, complaint and information on oath has this day been duly laid by of the of , in the county of , before me, , a justice of the said of , that on the day of 18 at the of , in said county, one did threaten to commit a crime against the property of in that and that he has just cause to fear that the said will and has demanded surety of the peace against the said and it appearing to me upon examination on oath, of the said and of that there is just reason to fear the commission of said crime threatened by the said against the peace of the people of the state of New York, and the form of the statute in such case provided;

We, therefore, command you, forthwith to arrest and take the body of the said and bring before the said , at the in the said of , with this warrant and a return of your doings thereon indorsed, to answer the said complaint and information, and to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the , of , in the county aforesaid, the day of , 18 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named and now have him before the magistrate by whom this warrant was issued.

Dated 18

No. 17.

§ 88. Discharge.

[Title of Action].

STATE OF NEW YORK, }
COUNTY OF } ss.

Whereas it appears, from the evidence and proof submitted to me on the examination heretofore had herein, that there is no just reason to fear the commission of the crime alleged, in the information, to have been threatened, I do hereby order the said to be discharged.

Dated, , 18 . ,
Justice of the Peace.

No. 18.

§ 89. Undertaking to Keep the Peace.

STATE OF NEW YORK, }
COUNTY OF } ss.
OF ,

Whereas, an information was laid before , Esq., justice of the peace, on the day of , 18 , that had, at said , on the day of , 18 , threatened to commit the crime of
against the *person* , and said magistrate having examined on oath the complainant *and witnesses*, and reduced *h examination* to writing, and caused *them* to be duly subscribed;

Whereupon a warrant was issued, and proceedings were duly taken before such magistrate, and it appears by the evidence that there is just reason to fear the commission of the said crime, and the said person complained of is required to give security in the sum of $ to keep the peace, pursuant to the provisions of the Code of Criminal Procedure;

Now, therefore, we, the undersigned, residing in the of , N. Y., do hereby acknowledge ourselves to be jointly and severally indebted to the people of the state of New York in the sum of dollars, to be well and truly paid, if default shall be made in the conditions following: THE CONDITIONS of this undertaking are such, that if the said person complained of shall personally appear at, and abide the order of, the next court of sessions of the county of , N. Y., and shall in the meantime keep the peace towards the people of this state, and

particularly towards the said , the complainant, then this undertaking to be void, otherwise of full force.

Taken, subscribed and acknowledged, before me, this day of , 18 . }

[*Signature.*]

No. 19.

§ 90. Warrant of Commitment—Security to Keep the Peace.

STATE OF NEW YORK,
COUNTY OF } ss.
OF

In the name of the people of the state of New York:

To of the of , and to the keeper of the common jail of the county of , greeting:

Whereas, , of the of , county of , N. Y., was charged under an information duly laid before me, the undersigned justice of the peace, with threatening to commit the crime of , against the by

And such proceedings were thereupon had before me, pursuant to the provisions of the Code of Criminal Procedure, that there appeared just reason to fear the commission of the crime threatened by said person complained of;

Whereupon *he*, the said accused, was required by me to enter into an undertaking in the sum of dollars, with sufficient *suret* , to abide the order of the next court of sessions of said county; and in the meantime to keep the peace towards the people of this state, and particularly towards the complainant.

And whereas, said accused has neglected and omitted to give or enter into said undertaking so required of him; by reason whereof he is hereby committed.

These are, therefore, to command you, the said constable, forthwith to convey and deliver him, the said , into the custody of the keeper of tbe common jail of said county; and you, the said keeper, are hereby required to receive the said into your custody in the said jail, and him safely keep and detain there, until he shall find such sureties as aforesaid, or be discharged according to law.

Given under my hand, at the said of this day of , 18 .

[*Signature.*]

No. 20.

§ 91. Warrant to Release Prisoner.

[Title of Action].

STATE OF NEW YORK, }
COUNTY OF } ss.

In the name of the people of the state of New York:
To the keeper of the common jail of said county, greeting:

Whereas, the said is detained by you under a warrant of commitment issued by , justice of the peace of the of , in said county, on the day of , 18 , for not finding sureties of the peace upon the complaint of ;

And, whereas, the said has, since his said commitment found sureties before us;

This is to command you forthwith to release from your custody the body of , if detained by you for no other cause than that specified in said warrant of commitment; and for your so doing, let this be your sufficient warrant.

Witness, and , justices of the peace of the of , county of , N. Y., this day of , 18 .

[*Official signature.*]

No. 21.

§ 93. Warrant of Commitment.

Whereas, , of the town of , county of , N. Y., did, in the presence of me, the undersigned, justice of the peace, assault, or threaten to assault (or to commit a crime against his person or property, or contended with him in angry words).

And whereas, he was required by me to enter, etc.

And whereas, he has neglected, etc.

These are, therefor, etc.

Supply from last form.

No. 22.

§ 102. Requisition of Sheriff for Military Aid.

To Brigadier-General (or other commanding officer):

Sir: Having been this day resisted in the execution of a warrant of a magistrate for the arrest of A B., charged with murder (or having reason to apprehend that resistance is about to be made to the execution of the process), I, the sheriff of the county of , in

pursuance of the statutes of this state, in such case made and provided, do hereby require you and the military under your command (or men of your command), armed and equipped as the law directs, to aid me in the execution of said warrant (or other process, as the case may be), and that you report yourself forthwith to me (or on the day of , 18 , at o'clock noon), with your said command (or with the said number of men), ready for service at .

Dated , 18 .

C. D., Sheriff of county.

No. 23.

§ 108. Certificate of Resisters.

To the court (from which process issued):

I, the sheriff of county, do hereby certify to the court that the following are the names of the persons resisting the process (describing it) and their aiders and abettors.

Names:

,
,
,
.

Dated , 18 .

C. D., Sheriff of county.

No. 24.

§ 111. Requisition of Sheriff for Military to quell a Riot.

To Brigadier-General (or other commanding officer):

Sir: A riot and breach of the peace (or unlawful assembly, as the case may be) having occurred at , in the county of , I, the sheriff of said county, in pursuance of the statute in such case made and provided, require you with (describe the kind and number of troops), armed and equipped as the law directs, to aid me in quelling said riot and breach of the peace; and that you report yourself forthwith to me at , with your said command ready for service.

Dated , 18 .

C. D., Sheriff of county.

No. 25.

§ 138. Bond to Change Venue in Libel Cases.

Know all Men by these presents, that I, principal and and sureties, of the of and

state of New York are held and firmly bound unto of a resident of the state of New York in the sum of dollars, to be paid to the said or to certain attorney, executors, administrators or assigns. For which payment well and truly to be made we bind ourselves and our heirs, executors or administrators, jointly and severally, firmly by these presents. Sealed this day of , in the year of our Lord, one thousand eight hundred and .

The condition of this obligation is such, that whereas an indictment has been found against the above named in the court of in and for the county of , for libel against the above named , in a certain paper published at and known as , and whereas the above named desires to have the place of trial changed to county where said libel was printed as alleged, now therefore if the above bounden if the place of trial be changed as aforesaid, and he shall be convicted of the said libel, shall and do well and truly pay or cause to be paid to the above named , his reasonable and necessary traveling expenses in going to and from his place of residence and place of trial, and his necessary expenses in attendance thereon, without fraud or delay then the preceding obligation to be void, otherwise to remain in full force and virtue.

[L. S.]
[L. S.]
[L. S.]

STATE OF NEW YORK, }
county of . } ss.

On this day of in the year one thousand eight hundred and before me, the subscriber, personally came to me known to be the persons described in and who executed the within instrument, and severally acknowledged that he executed the same.

(Justification clause.)

(Indorsed.) I do hereby approve of the sufficiency of the within named sureties.

Dated .

T. R. W., Justice Supreme Court.

No. 26.

§ 145. Information for warrant. General Form.

To , one of the justices of the peace in and for the county of :

county of , ss.

of the of , in said county,

being duly sworn, says that, on the day of , 18 , at the town of , in said county, one , of the , in the county of , did (here set forth with particularity the offense charged).

He, therefore, prays that legal process may be issued, and that the said be apprehended and held to answer to said complaint, and be dealt with according to law.

[*Signature.*]

Subscribed and sworn to before me, this day of , 18 . }

,
Justice of the Peace.

No. 27.

§ 148. Information for Affray.

county of , ss.

, being duly sworn, deposes and says, that he in said of ; that, on the day of , 18 , at the of , in said county, did, with force and arms, make an affray, by fighting with in a public place, to wit:

against the peace of the people of the state of New York, and the form of the statute in such case provided.

Taken, subscribed and sworn to before me, this day of , 18 .

[*Signature.*]

No. 28.

Id. Information for Arson.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of that in the time of the day of , 18 , one did willfully set fire to or burn a certain to wit: in the of (in which there were at the time human beings,) to wit: by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 29.

Id. Information for Arson, 2d and 3d Degrees.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that in the time of the day of , 18 , in the of one did willfully set fire to or burn the shop, warehouse or other building, to wit: in which there was not at the time a human being; said adjoined to or was within the curtilage of an inhabited dwelling-house, to wit: so that the said house was endangered by such firing; in that said did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 30.

Id. Information for Assault and Battery.

COURT, COUNTY OF , } ss.

, being duly sworn, deposes and says: That he in the said of , that on the day of , 18 , at the of , in said county, one with force and arms, did make an assault, and him the said did then and there beat, wound and ill-treat, without cause or provocation by

Subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 31.

Id Information for Assault with Intent to Kill.

county of ss

, being duly sworn, deposes and says: That he resides in the of , that on the of , 18 , at the of , in said county, with force and arms, in and upon the

said then and there being, feloniously did make an assault, and the said with a certain , which the said then and there in hand had and held, the said being then and there a deadly weapon, and such means and force as were then and there likely to produce death, feloniously did beat, strike, cut and wound with intent him, the said then and there, feloniously and willfully to kill by

Taken, subscribed and sworn to before me, this day of , 18 . [*Signature.*]

,
Justice of the peace.

No. 32.

Id. Information for Assault with Intent to Kill with Firearms.

county of ss.

, being duly sworn, deposes and says: That he resides in the of that, on the day of 18 , at the of , in said county, with force and arms, in and upon the body of in the peace of the said people then and there being, feloniously did make an assault, and to, or toward and against the said a certain then and there loaded and charged with gunpowder and lead, which the said then and there had and held the same, being then and there likely to produce death, willfully and feloniously did then and there shoot off and discharge with intent him the said thereby then and there feloniously and willfully to kill by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 33.

Id. Information for Assault with Intent to Ravish Woman Ten Years and Over.

County of , ss.

, being duly sworn, deposes and says:

That he resides in the of ; that on the day of , 18 , at the of in said

county, with force and arms, in and upon , she then and there being a woman of the age of ten years and upwards, in the peace of God and of the said people then and there being, violently, forcibly and feloniously, did make an assault, and her, the said then and there violently, forcibly and against her will, feloniously did ravish and carnally know by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 34.

Id. Information for Assault, etc., on Child under Ten Years of Age.

county of , ss.

, being duly sworn, says that he resides in , that, on the day of 18 , at the of , in said county, , with force and arms, in and upon one , she then and there being a female child under the age of ten years, to wit, of the age of years, in the peace of God and the said people then and there being, did make an assault, and her, the said , then and there did beat, wound and ill-treat, so that her life was greatly despaired of, with intent, her, the said , feloniously, to unlawfully and carnally know by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 35.

Id. Information for an Assault on an Officer.

county of , ss.

, being duly sworn, deposes and says: That on the day of , 18 , at the of , in said county, one , with force and arms, in and upon one , he then and there being a and peace officer of the said of , and a ,

unlawfully and violently, without justifiable or excusable cause, did assault, beat, bruise, wound and use personal violence upon, and him evil treat, while he, the said , so being a and peace officer aforesaid, was then and there lawfully engaged in the discharge of his duties as such and peace officer of said of , and him, the said peace officer as aforesaid, did unlawfully and willfully, resist in the discharge of his duties as such peace officer, against the peace of the people of the state of New York, and the form of the statute in such case provided by

Taken, sworn to and subscribed before me, this day of , 18 . } [*Signature.*]

, Justice of the Peace.

No. 36.

Id. Information for Confining Cows in a Crowded Condition. etc.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of , in the county of , one wickedly, unlawfully and willfully then and there, to wit, in , in said city, did keep divers cows for the production of milk for market, sale or exchange in a crowded and unhealthy condition, or did feed divers cows, then and there kept by him, the said , on food that produces impure, diseased and unwholesome milk, to wit, distillery waste, usually called swill, or , in violation of the statutes in such case made and provided.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

, Justice of the Peace.

No. 37.

Id. Information for Injury to Animal by Act or Neglect.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the

of , in the of , one did by his act or neglect, willfully, wickedly and maliciously kill, maim, wound, injure, torture and cruelly beat a certain horse, mule, ox, cattle, sheep or other animal, to wit, , belonging to him, the said , or to one , by then and there

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 38.

Id. Information for Keeping, etc , Place for Fighting Animals.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of 18 , at the of in the county of , one willfully, unlawfully and wickedly, did keep, use, was connected with as , interested in the management of, did receive money for the admission of divers persons to a certain place, to wit:

for the purpose of, and such place was then and there kept or used for the purpose of fighting or baiting certain bulls, bears, dogs, cocks or other creatures, to wit:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 39.

Id. Information for Overdriving, etc., Any Living Creature.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of one , did willfully, unlawfully, wickedly, or cause or procure to be overdriven, overload, torture, torment, deprive of necessary sustenance, unnecessarily beat, cruelly beat, needlessly mutilate, needlessly kill, a certain living creature, to wit:

by then and there

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 40.

Ib. Information for Setting on Foot, etc., Fights, Among Game Animals.

county of , ss.

, being duly sworn, deposes and says, that he resides in the of , that on the day of , 18 , at the of , in the county of , one did wickedly, unlawfully and willfully set on foot, instigate, move to, carry on, promote, engage in as a witness, assistant, umpire or judge, or did towards the furtherance of a premeditated fight or contention between game birds, game cocks, dogs, bulls, bears, dogs and rats, dogs and badgers or other animals, to wit:
which had been theretofore and was then and there, to wit: on the day aforesaid at the and in the county aforesaid, premeditated by certain persons who then and there, to wit: at the time aforesaid, and in the place aforesaid, did have the ownership or custody of such animals, to wit: of the aforesaid
in violation of the statute in such case made and provided.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 41

Id. Information against Disorderly Child.

STATE OF NEW YORK, }
COUNTY OF , } ss.

, being duly sworn, deposes and says, that he in said of ; that is a disorderly child, for that he deserted h home without good and sufficient cause, and kept company with dissolute or vicious persons, against the lawful commands of h and is a disorderly child within the intent and meaning of the statute; and is of the age of years, that the facts upon which this affidavit is based are as follows:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 42.

Id. Information for Disorderly House.

county of ss.

, being duly sworn, deposes and says: That he resides in that the premises known as No. street, in the of in said county, were on the day of 18 , kept, maintained, conducted and occupied by as a common, ill-governed and disorderly house, and common bawdy-house and house of prostitution, and a resort for tipplers, drunkards, common prostitutes and reputed theives, with other vile, wicked, idle, dissolute and disorderly men and women, and reputed thieves, who, or most of whom, are in the practice of drinking, dancing, quarreling, fighting, whoring, rioting, disturbing the peace, cursing and swearing at almost all hours of the day and night, to the great damage and common nuisance of the people of the state of New York, there inhabiting, residing in the neighborhood, and passing thereby; that the grounds of the deponent's knowledge are

Taken, sworn to and subscribed before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 43.

Id. Information for Permitting, etc., Place to be Kept and Used for Fighting Dogs, etc.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , one did permit and suffer a certain place, to wit: to be kept and used for the purpose of fighting or baiting bulls, bears, dogs, cocks or other creatures, to wit: he, the said being the thereof.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 44.

Id. Information for Embezzlement.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on or about the

day of 18 , at the of , in said county, one being a servant or agent of and not an apprentice, nor within the age of eighteen years, did feloniously embezzle, and convert to his own use, without the assent of the said , the property of the said which had come into the possession of said as such servant or agent by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 45.

Id. Information for False Pretenses.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that, on the day of , 18 , at the of , in said county, , with force and arms, with intent feloniously to cheat and defraud one did then and there feloniously, unlawfully, knowingly and designedly, falsely pretend and represent to the said that and the said then and there believing the said false pretenses and representations so made as aforesaid, by the said , and being deceived thereby, was induced by reason of the false pretenses and representations so made as aforesaid to deliver, and did then and there deliver to the said of the value of dollars, of the proper moneys, valuable things, goods, chattels and personal property and effects of the said , and the said did then and there receive and obtain the said of the value of dollars from the said of the proper moneys, valuable things, goods, chattels and personal property and effects of the said by means of the false pretenses and representations aforesaid, with intent feloniously to cheat and defraud the said of the said of the value of dollars; that in fact and in truth the pretenses and representations so made as aforesaid by the said to the said was and were in all respects utterly false and untrue; that in fact and truth the said well knew the said pretenses and representations as by him made as aforesaid to the said to be utterly false and untrue at the time of making the same.

That the said by means of the false pretenses and representations aforesaid, feloniously, unlawfully, falsely, knowingly and

designedly did receive and obtain from the said of the value of dollars of the proper moneys, valuable things, goods, chattels and personal property and effects of the said with intent feloniously to cheat and defraud the said of the same

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 46.

Id. Information for Felony or Misdemeanor.

county of , ss.

, being duly sworn, deposes and says: That he resides in ; that one at the of , in the county of aforesaid, on the day of , 18 , did feloniously, wrongfully, unjustly, unlawfully wickedly, willfully, corruptly, falsely, maliciously and knowingly violate chapter of the laws of the state of New York, passed , in that he did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 47.

Id. Information for Forgery.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that one at in , with intent to injure and defraud, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain , which said false, forged and counterfeited is as follows, that is to say, by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 48.

Id. Information for Assault—Sharp, Dangerous Weapon.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of that on the day of 18 , at the of , in said county, with force and arms, in and upon the said then and there being, did make and assault, and the said with a certain the said being then and there a sharp, dangerous weapon, which the said then and there, in his hand had and held, then and there did beat, strike, cut, stab and wound, with intent upon him, the said then and there feloniously to do bodily harm, without justifiable or excusable cause, by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 49.

Id. Information for Bigamy.

county of , ss.

, being duly sworn, deposes and says: That—he resides in the of that one on the day of , 18 , at the of did marry one and the said did then and there have for and that the said being so married afterward, to wit: on the day of , 18 , with force and arms at the of in the county of feloniously did marry and take as one and to the said was then and there married, the said being then and there living and in full life.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No 50.

Id. Information for Breach of the Peace.

county of , ss.

, being duly sworn, deposes and says: That he is

a in said town of in said county, that on the day of , 18 , one did make a breach of the peace by quarreling, fighting and making a loud noise, and collecting a crowd in in said of .

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 51.

Id. Information for Acts Tending to Create a Breach of the Peace.

county of , ss.

, being duly sworn, deposes and says: That he in said of , that on the day of , 18 , at the city of , in said county, one did which had a tendency to excite h , and cause h to create a breach of the peace against the peace of the people of the state of New York, and the form of the statute in such case provided.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 52.

Id. Information for Burglary, First Degree, and Larceny.

county of , ss.

, being duly sworn, deposes and says, that he resides in of ; that on the day of 18 , at the of , in said county, with force and arms, about the hour of in the night time of the same day, the dwelling-house of another to wit, of one there situate, feloniously and burglariously, did break into and enter by forcibly bursting and breaking an outer door of the said dwelling, or by in which said dwelling house there was then at the same time some human being, to wit: with intent feloniously and burglariously to commit some crime therein, to-wit: then and there the goods and chattels of the said in the said dwelling-

house then and there being, and then and there feloniously and burglariously to steal, take and carry away, and of the value of dollars, of the goods, chattels and property of the said in the said dwelling-house then and there being, feloniously, burglariously, did steal, take and carry away by

Taken, subscribed and sworn to before me, this day of 18 . } [*Signature.*]

Justice of the Peace.

No. 53.

Id. Information for Burglary and Larceny.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of that, on the day of , 18 , at the of , in said county, with force and arms, the of one there situate, feloniously and burglariously did break into and enter, the same being a as above, in which divers goods and merchandise and valuable things were then and there kept for use, sale and deposit, to wit, the goods and chattels of the said in said as above, then and there being, then and there feloniously and burglariously to steal, take and carry away of the value of dollars, of the goods and chattels and property of the said in the said as above, so kept as aforesaid, then and there being feloniously and burglariously did steal, take and carry away by

Taken and subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 54

Id. Information Against Persons Having Custody of child Permitted to Beg, etc.

county of , ss.

, being duly sworn deposes and says: That he resides in the of that has the custody of a child under the age of fourteen years,

and permit and neglects to restrain such child from begging, gathering, picking and sorting of rags, and from collecting cigar stumps, bones and refuse from markets in said of , in that he

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 55.

Id. Information as to Violation of Ordinances.

county of ss.

, being duly sworn, deposes and says: That he resides in the of , N. Y.; that on the day of , 18 , in said one did willfully and unlawfully violate chapter of title , of the laws and ordinances of the of aforesaid relating to in that he did

Subscribed and sworn to before me, this day of 18 . } [*Signature.*]

Justice of the Peace.

No. 56.

Id. Information for Abandoning Maimed Creature in a Public Place.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of that on the day of , 18 , one did willfully, unlawfully and wickedly then and there abandon to die in a certain public place in said of , to wit: a certain maimed, sick, infirm and disabled creature, to wit:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 57.

Id. Information for Aiding, etc., Persons to Fight Dogs, etc.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of one did willfully, unlawfully and wickedly encourage, aid and assist one to keep a certain place, to wit: or to receive money for the admission of divers persons to a certain place for the purpose of, and such place was then and there, by the aid of the said unlawfully kept and used by the said for the purpose of fighting, baiting certain bulls, bears, dogs, cocks or other creatures, to wit:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 58.

Id. Information for Allowing Disabled Animals to Lie in Highways, etc.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of , one then and theretofore being the owner, driver or in possession of a certain old, maimed and diseased horse or mule, which had theretofore been turned loose or left disabled in a certain street, lane or public place in said of , to wit: did unlawfully, willfully and wickedly, for more than three hours after knowledge of such disability, allow such horse or mule to lie in a certain street, lane, or public place in said city therein, to wit:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 59.

Id. Information for Carrying Creatures in a Cruel Manner.

county of , ss.

, being duly sworn, deposes and says: That he re-

sides in the of ; that on the day of , 18 , one did willfully, unlawfully and wickedly carry or cause to be carried in or upon a , a certain creature, to wit, , in a cruel and inhuman manner, by then and there

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]
,
Justice of the Peace.

No. 60.

Id. Information for Keeping, etc., a Room, etc., for Gambling.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , and at the present time, did and does keep a room, building, arbor, booth, shed, tenement, boat or float, to wit: at in the of , to be used or occupied for gambling, to wit: or did and does knowingly permit the same to be used or occupied for gambling, to wit: being the owner, superintendent or agent of a room, building, arbor, booth, shed, tenement, boat or float, to wit: at in the of did and does rent the same to be used or occupied for gambling, to wit:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]
,
Justice of the Peace.

No. 61.

Id. Information for Seizure, etc., of Gambling Apparatus.

county of , ss.

, being duly sworn, deposes any says: That he resides in the of ; that one has committed an offense, in that he did and has as deponent has reason to believe and does believe upon his person or at in the of certain

articles of personal property, to wit: or gambling tables, devices or apparatus for the purpose of or public or private lottery policies, to wit: the discovery of which may lead to establish the truth of said charge for which complaint is hereby made against said .

Wherefore deponent prays that a warrant may issue as provided by law for the arrest of said for diligent search to be made for such property, tables, devices or apparatus, and if found, to bring the same before the magistrate or justice issuing the warrant, or in case of his absence or inability to act, before the nearest or most accessible magistrate in the county of .

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 62

Id. Information for Interfering with an Officer.

STATE OF NEW YORK, } ss.
COUNTY OF , }

, being duly sworn, deposes and says: That he is a in said of ; that on the day of , 18 , at the of , in said county, with force and arms, did unlawfully, designedly and feloniously, forcibly interfere with , he then and there being a of the of , and having in legal custody one upon a criminal charge, to wit, upon the charge of committed by him, the said upon one by .

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No 63.

Id. Information for Killing Unborn Quick Child.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at in the county of one

did feloniously and willfully kill an unborn quick child by an injury to the mother of such child, in that he did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 64.

Id. Information for Larceny.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that on the day of 18 , at the of , in said county, divers goods and chattels of the value of dollars and cents, that is to say: were feloniously stolen, taken and carried away from the possession of the said , and that he has just cause to suspect and believe, and does suspect and believe, and there is probable cause to believe, that did steal, take and carry away the same; that the facts upon which this affidavit is based are as follows:

Taken, subscribed and sworn to before me, this day of , 18 , } [*Signature.*]

Justice of the Peace.

No. 65.

Id. Information for Larceny from the Person.

county of , ss.

, being duly sworn, disposes and says: That he resides in the of , that, on the day of , 18 , at the of , in said county, , with force and arms, from the person of , of the value of dollars, of the goods, chattels and personal property of the said then and there being found, feloniously did steal, take and carry away by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 66.

Id. Information for Libel.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of instant, at in said county, one did falsely, maliciously and scandalously frame, make, write and compose in a certain false, scandalous and libellous writing of, concerning and against the said to the purport and effect following, to wit: and that with intention to scandalize and disgrace the said , and to bring him into comtempt, infancy and disgrace, the said , did afterwards, to wit, on the day of , 18 , at the aforesaid, openly deliver and publish to said false, scandalous and libelous in that he did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 67.

Id. Information for Malicious Mischief.

county of , ss.

, being duly sworn, deposes and says: That he resides in ; that one on the day of 18 , at the of did maliciously or wantonly injure, or deface a monumen. or work of art, building, fence or other structure, or did destroy or injure an ornamental tree, shrub or plant, situated on a private ground or on a street, public place, public or private way or cemetery; or did paint, or print upon or in any other manner place upon or affix to any stone or rock, not a part of a building, or upon or to any bridge or tree, words, letters, characters or devices, stating, referring to or advertising, or intended to state, refer to or advertise the sale or manufacture of any property or article, profession, business, exhibition, amusement or place of amusement, or other thing, or did directly or indirectly cause any such act to be done, or did aid therein, by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 68.

Id. Information for Malicious Trespass.

county of , ss.

, being duly sworn, deposes and says: That he resided in street in the of , in the county aforesaid, that on the day of in said , one did maliciously, unlawfully, willfully and wantonly by

Taken, subscribed and sworn to before me, this day of 18 . } [*Signature.*]

Justice of the Peace.

No. 69.

Id. Information—Manslaughter, First Degree.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at in the county of one did feloniously kill one without a design to effect death, by the act, procurement or culpable negligence of said while said was engaged in by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 70.

Id. Information for Mayhem.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of , one then and there feloniously, willfully and maliciously did on purpose, from premeditated design, or with intent to kill or commit a felony, to wit: cut out or disable the tongue of one , put out the eye of one slit or destroy the lip, or slit or destroy the nose of one , cut off or disable a limb or member, to wit: of on purpose by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 71.

Id. Information for Misdemeanor.

county of , ss.

, being duly sworn, deposes and says: That he resides in ; that on the day of , 18 , in said , one did unlawfully and knowingly violate section of chapter of the laws of the state of New York, relating to in that he did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No 72.

Id. Information for Murder Perpetrated by an Act Dangerous to Others.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of , in the county of , one did feloniously, willfully and intentionally, by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, did kill one , although without any premeditated design to effect the death of any particular individual in that he did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 73.

Id. Information for Murder Perpetrated in Commission of a Felony.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that on the day of , 18 , at the of in the county of , one did, feloniously and willfully and intentionally, whilst engaged in the commission of a felony, kill one in that he did

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 74.

Id. Information for Murder Perpetrated from Deliberate Design.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that one of in the county of , on the day of , 18 , with force and arms, did then and there feloniously, willfully and intentionally, and from a premeditated and deliberate design to effect the death of one kill the said by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 75.

Id. Information for Perjury.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that on the day of , 18 , instant, at the of in the county of , a certain action in which was plaintiff and was defendant, was before and that upon the of said action appeared as a witness for and on behalf of the said and was then and there duly and regularly sworn by the said as such ; that the evidence he should give relating to the matter in difference between the said parties should be the truth, the whole truth and nothing but the truth; and that upon the of the said action it then and there became material to inquire whether and that thereupon the said being so sworn as a witness as aforesaid, did then and there on the of said action falsely, willfully and corruptly depose, swear and testify among other things, that ; whereas, in truth and in fact, the whereby the said did then and there willfully and corruptly swear falsely and commit willful and corrupt perjury.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 76.

Id. Information to Obtain Warrant Against Fighting, etc.

county of , ss.

, being duly sworn, complains, deposes and says: That he resides in the of ; that he has just and reasonable cause to suspect and does suspect that certain of the provisions of law relating to and affecting animals, and to prevent prize fights and fights among game animals, and for the prevention of cruelty to animals, are being and are about to be violated by , at and within the particular building and place within the known as and now occupied, kept and used by

Wherefore this deponent prays that a warrant may be immediately issued and delivered, pursuant to the statute in such case made and provided, to any person authorized by law to make arrest for such offenses, authorizing him to enter and search such building and place and to arrest the said , by whatsoever names they may be known or called, or any or either of them there present found violating any of said laws, and to bring such person, when so arrested, before the nearest magistrate of competent jurisdiction to be dealt with according to law.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 77.

Id. Information as to Female under Sixteen Years Living in House of Prostitution.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that he has just and reasonable cause to suspect that a female child, of the age of years, is living, detained and kept, in a house and place No. street, in said of , for the purposes of prostitution. That the grounds of deponent's suspicion are as follows:

Taken, subscribed and sworn to before me, this day of , 18 } [*Signature.*]

Justice of the Peace.

No. 78.

Id. Information for Public Intoxication.

COURT,
COUNTY OF , }
vs. }

county, ss.

, being duly sworn, deposes and says: That he is ; that the above named defendant was on the day of , 18 , about M., intoxicated in a public street or place to wit. in said of , contrary to the provisions of the act entitled "An act to revise and consolidate the laws regulating the sale of intoxicating liquors." passed April 30, 1892.

Subscribed and sworn to before me, this day of 18 . } [*Signature.*]

,
Justice of the Peace.

The defendant, immediately on being brought before said justice, was informed of the charge against h and h right to the aid of counsel in every stage of the proceedings, and before any other proceedings were had, plead guilty. Tried and convicted and fined $ and $ costs, or be committed to the penitentiary or jail of said county, for the term of days, unless the fine be sooner paid.

No. 79.

Id. Warrant of Commitment.

STATE OF NEW YORK,
COUNTY OF . } ss.

In the name of the people of the state of New York:

To any sheriff, constable, etc.:

Whereas, has this day been duly examined, tried and convicted before me , one of the justices of the peace of the town of , in said county, upon the information or oath of and on competent testimony, of having been intoxicated in a public place in said town of , contrary to the provisions of section 35 of an act entitled "An act to revise and consolidate the laws regulating the sale of intoxicating liquors," passed April 30, 1892;

And whereas, upon such conviction, he was adjudged to pay a fine of dollars, and dollars costs, and in default

thereof to be committed to the of said county for a term of days, unless the fine be sooner paid;

You are hereby commanded forthwith to convey and deliver the said to the keeper of the said . And you, the said keeper of are hereby commanded to receive the said into your costody, in the said , and him there safely keep, until the expiration of the said days, unless the fine be sooner paid, or be thence discharged in due course of law.

Given under my hand, at , the day of , 18 .

Justice of the Peace.

No 80.

Id. Information for Receiving Stolen Goods.

county of , ss.

, being duly sworn, says: That he resides in the of , that, on the day of , 18 , at the of , in said county, being a person of evil name and fame and dishonest conversations, and common buyer and receiver of stolen goods, with force and arms, of the value of dollars, of the goods and chattels of by then lately before feloniously stolen of the said unlawfully, unjustly and for the sake of wicked gain, did feloniously receive and have the said then and there well knowing the said goods and chattels to have been feloniously stolen; that the facts upon which this affidavit is based are as follows:

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No 81.

Id. Information for Reckless Driving.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that one who was then and there driving a certain carriage, to wit, a upon a certain turnpike road or public highway within this state, to wit,

upon a certain in the of which then and there was such a turnpike road or public highway, with or without passengers, in said carriage, did then and there at the time and place aforesaid willfully, unlawfully, wickedly and maliciously run, cause or permit to be run his horses then and there attached.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 82.

Id. Information for Refusing to Aid an Officer.

STATE OF NEW YORK, COUNTY OF } ss.

, being duly sworn, deposes and says: That he in said of ; that on the day of , 18 , at the of , in said county, did willfully and unlawfully disobey the command and request of the said being at the time a and peace officer of, in and for the said of , and an officer authorized to execute criminal process; and the said having as such officer, then and there commanded the assistance of the said in securing and conveying to the one of the of aforesaid, that had then and there been duly arrested by the said policeman, and police officer as aforesaid, against the peace of the people of the state of New York, and the form of the statute in such case provided.

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 83.

Id. Information for Rescuing a Prisoner.

county of , ss.

, being duly sworn, deposes and says: That he in said of , that on the day of , 18 , that the of in said county with force and arms, did unlawfully, designedly and feloniously, forcibly rescue from the custody of one he then and there being a and peace officer of the

of , one a prisoner, then and there held in the legal custody of him, the said upon a criminal charge to wit, upon the charge of committed by him, the said upon one by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 84.

Id. Information for Robbery—First Degree.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of ; that on the day of , 18 , at the of , in said county, , with force and arms, in and upon one , in the peace of God and of the said people then and there being, feloniously did make an assault, and him, the said , did then and there feloniously put in fear of some immediate injury to his person and in danger of his life, did then and there feloniously and violently steal, take and carry away from the person and against the will of the said , value of dollars, of the goods, chattels and property of the said by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 85.

Id. Information for Seduction.

county of , ss.

, being duly sworn, deposes and says: That she resides in the of ; that on the day of , 18 , at the of , in said county, with force and arms, under promise of marriage, did seduce and have illicit connection with one she, the

said , then and there being an unmarried female of previous chaste character by

Taken, subscribed and sworn to before me, this day of , 18 , } [*Signature.*]

,
Justice of the Peace.

No. 86.

Id. Information Against Person Selling, etc. Chattels.

county of , ss.

, being duly sworn, deposes and says: That he resides in ; that he did, on the day of , 18 , hire, loan and let to one a , and said did, without the consent of , who is the owner, thereof, sell and deliver the same, or did pawn or pledge the same at , to one and obtain thereon and therefor the sum of

Taken, subscribed and sworn to before me, this day of 18 . } [*Signature.*]

,
Justice of the Peace.

No. 87.

Id. Information Against Person Selling Material, etc., Furnished to be Manufactured.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that on the day of , 18 , at the of one did willfully pawn, pledge, sell and convert to h own use material, to wit: of the value of furnish to h by for the purpose of being manufactured into by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

,
Justice of the Peace.

No. 88.

Id. Information for Selling, etc., Mortgaged Property.

county of , ss.

, being duly sworn, deposes and says: That he resides in the of , that on the day of , 18 , one gave, executed and delivered to a mortgage upon certain personal property, to wit: of the value of dollars.

That afterwards and on the day , 18 , at in said county of , while the said mortgage was a lien on the said personal property, the said with intent to defraud said the mortgagee of said property, or a purchaser of said property from said , did willfully, maliciously and unlawfully sell, assign, exchange and secrete the aforesaid personal property so mortgaged or sold as aforsaid to said by

Taken, subscribed and sworn to before me, this day of , 18 . } [*Signature.*]

Justice of the Peace.

No. 89.

§ 151. Warrant, General.

County of Albany [or as the case may be].

In the name of the people of the state of New York. To any peace officer in this state [or in the county of Albany, or as the case may be, as provided in sections one hundred and fifty-five and one hundred and fifty-six].

Information upon oath having been this day laid before me, that the crime of [designating it] has been committed, and accusing C. D. thereof.

You are therefore commanded forthwith to arrest the above-named C. D., and bring him before me, at [naming the place], or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at the city of Albany [or as the care may be], this day of eighteen hundred

E. F., *Justice of the Peace.*
[or as the case may be.]

No 90.

STATE OF NEW YORK, }
COUNTY OF } ss.

I, , hereby certify that I have arrested the within , and have him in my custody now here, as I am within commanded.

Dated at , this day of , 18 .

,
Sheriff.

No. 91.

Return, where all the Defendants can not be Found.

By virtue of the within warrant, I have arrested the within and , and have them here in my custody, but the within named can not be found.

Dated, etc., .

,
Constable.

No. 92.

Return, where the Magistrate, who Issued the Warrant is Absent.

By virtue of the within warrant, I arrested the within named defendant, and forthwith brought him to the office of the magistrate who issued the warrant, but found the said magistrate absent therefrom.

Dated, etc.

,
Constable.

No. 93.

Return, when the Magistrate, who Issued the Warrant, has gone out of Office

By virtue of the within warrant, I arrested the within named defendant, but, at the time of such arrest, , who issued the warrant, had ceased to be a magistrate by reason of the expiration of his term of office (or otherwise).

Dated, etc.

,
Constable.

§ 170.

No. 94.

I do hereby direct that the arrest on the within warrant may be made on Sunday or at night.

Dated, etc.

,

Justice of the Peace.

No 95.

Id. Warrant to Prevent Prize Fights, Cruelty to Animals, etc.

COURT, OF , } ss.

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the city and county of , greeting:

Whereas, has made oath to and before me, , a justice in and for the of , that he has just and reasonable cause to suspect, and does suspect, that certain of the provisions of law relating to and affecting animals, and to prevent prize fights and fights among game animals; and for the prevention of cruelty to animals, are being and are about to be violated by , at and within the particular building and place within the city and county aforesaid, known as and now occupied, kept and used by

Now, therefore, I, , a justice as aforesaid, do authorize you to enter and search the said building and place within the and of , known as , and to arrest the said by whatsoever names they may be known or called, or any or either of them there present found violating any of said laws, and to bring such person when so arrested before the nearest magistrate of competent jurisdiction to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of in the county aforesaid, the day of , 18 .

[*Signature.*]

§ 193.

The within named , having been brought before me under this warrant, committed for examination to the sheriff of the county of

No. 96.

§ 151. Warrant for Seizure of Gaming Apparatus, etc.

COURT, OF , } ss.

In the name of the people of the state of New York: To any peace officer of the county of :

Whereas, complaint on oath, has been duly made before me, a justice of the of , that one

We, therefore, command you forthwith to arrrest the said , to make diligent search for such property, tables, devices or apparatus; and, after demanding entrance, to break open and enter said house or place, and any house or place wherein such gambling tables, establishment, devices or apparatus shall be kept, and to seize the aforesaid gambling tables, establishment, apparatus or devices, and to deliver the same to of the , and to return this warrant with your doings thereon indorsed, to me, the said , at the in the said of , or, in case of my absence or inability to act, before the nearest or most accessible magistrate in the county of . Hereof fail not at your peril.

Witness the said , at the of , in the county aforesaid, the day of , 18 .

[*Signature.*]

By virtue of the within warrant I have seized the following:

Dated , , 18 .

No. 97.

§ 151. Warrant as to Female Under Sixteen Years, Living, etc., in House of Prostitution.

POLICE COURT, COUNTY OF . } ss.

In the name of the people of the state of New York: To any peace officer of the county of :

Whereas, complaint has this day been made by , of the of , in the county of , on oath, before , a justice of the of , that on the day of , 18 , at the , in said county, one . a female child, of the age of years, is living, detained and kept in a house and place No. , street, in said of , for the purposes of prostitution; and whereas, in the

judgment of said justice, said has just and reasonable cause to suspect that said child is so living, detained and kept as aforesaid, against the peace of the people of the state of New York, and the form of the statute in such case provided.

We, therefore, command you forthwith to enter and search said house and place, and bring said child, together with all persons occupying said house or place or in charge thereof, before the said , at the in the said of , with this warrant, and a return of your doings thereon indorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 18 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named and now have her before the magistrate by whom this warrant was issued.

Dated , , 18 .

No. 98.

§§ 151–4. Warrant of Arrest for Misdemeanor.

court, county of ss.

In the name of the people of the state of New York: To any peace officer in the county of :

Information upon oath having been this day laid before me, that the crime of has been committed, and accusing thereof;

You are therefore commanded forthwith to arrest the above named and bring h before me at the court, in the of , in the county of , or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county,

Dated at the of , this day of 18 .

No. 99.

§ 157. Proof of Justice's Signature.

of county of , ss.

, being duly sworn says, that he resides in the of , that the name of , signed to the above warrant of arrest, is the handwriting of , who is a justice of the of , in the county of by whom the above warrant was issued.

Sworn before me, this day of 18 .

No. 100.

Id. Return.

By virtue of the within warrant I have arrested the within named at in the county of and now have h before the magistrate by whom this warrant was issued, or before a magistrate in the said county of he having required me so to do.

Dated at the day of , 18 .

[*Signature.*]

No. 101.

§ 156. Endorsement upon Warrant.

This warrant may be executed in the county of Monroe.

Dated at the day of , 18

Justice of the Peace, county, N. Y.

No. 102

§ 159. Undertaking to Appear Before Magistrate Issuing Warrant Taken in the County of .

County of , ss.

We, of in the county of by occupation a defendant, and of in the county of by occupation a and of in the county of by occupation a sureties, acknowledge ourselves jointly and severally to owe the people of the state of New York, each the sum of hundred dollars, to be made and levied of our respective goods and chattels, lands and tenements, to the use of the said people, if default shall be made, in the condition following:

The condition of this recognizance is, that, whereas information has been made on oath, before a justice for the , that on the day of , 18 , at the , in said county, the crime of was committed, and accusing thereof. And, whereas, the said justice as aforesaid, did, on the day of, , 18 , duly issue a warrant for the arrest of said . And, whereas, the said has been duly arrested in the county of , and having required the officer making the arrest to take him before a magistrate in the said county of , he has this day been duly brought before me, the undersigned, one of the of said county of .

Now, therefore, if the said shall personally be and appear before the said justice aforesaid, at the , in the aforesaid, on the day of , 18 , at o'clock in the noon, then this recognizance to be void, otherwise to remain in full force and virtue; and we, the said sureties, will pay to the people of the state of New York the said sum of hundred dollars.

Taken, subscribed and acknowledged before me, this day of , 18 . }

Add justification.

,
,
,
[*Signature.*]

No. 103.

§ 159. Certificate of Admission to Bail.

I, , justice of of the of do hereby certify, that I have this day of 18 , admitted the within named to bail for his appearance before the magistrate named in the within warrant, and taken bail from h accordingly.

[*Signature.*]

No. 104.

§ 161. Certificate Denying Application to Bail.

COURT, }
COUNTY OF , } ss.

I, , a justice of the of , do hereby certify that an application was made to me on the day of , 18 , for the admission to bail of , held by me to answer the crime of , and I denied the said application.

Dated at the of , this day of , 18 ,

[*Signature.*]

No. 105.

§ 177, Subd. 3. Information against Person Arrested Without Warrant for Committing a Felony.

county of , ss.

, being duly sworn, deposes and says: That he is a peace officer in the aforesaid; that having reasonable cause for believing that one committed the crime of

in he arrested him without a warrant on the day of 18 , at said ; that the grounds of deponent for believing that said committed said crime are as follows:

Taken, subscribed and sworn to before me, this day of , 18 . }

[*Official signature.*]

No. 106.

§ 188-9. Statement and Questions Put to Defendant by Justice.

court of county of

18 .

Before Justice.

THE PEOPLE

vs.

Before Justice.

The defendant immediately on being brought before said justice was informed by said justice as follows:

You are charged with the crime of

You have the right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

Question? Do you require counsel? If you do, you will be allowed a reasonable time to send for him, and the examination will be adjourned for that purpose.

Answer.

(appeared as counsel for the defendant, or no counsel appearing, and after waiting a reasonable time therefor the said justice put the following questions to defendant):

Question. Do you desire an examination of this case, or do you waive examination and elect to give bail?

Answer.

[*Signature.*]

No. 107.

§ 192. Bail for Defendant's Appearance before Justice.

STATE OF NEW YORK.
COUNTY OF } ss.
OF

THE PEOPLE

against

defendant .

An information having been laid before , esq., justice of the peace, charging , *defendant* , with the offense of , and he having been brought before said justice for an examination of said charge, and the hearing thereof having been adjourned

We, *defendant* , residing at , in the of , county of , N. Y., by occupation a and surety, residing at , in the of , county of , N. Y., by occupation a , hereby undertake that the above-named *defendant* , shall personally appear before the said magistrate, during the said examination or that we will pay to the People of the State of New York, the sum of dollars.

Dated at , N. Y., this day of 18 .

[*Signature.*]

STATE OF NEW YORK, }
COUNTY OF } ss.

On this day of , A. D., 18 , before me, the subscriber, personally came and , to me personally known to be the same persons described in and who executed the above undertaking of bail, and severally acknowledged that they executed the same.

[*Signature.*]

No. 108.

COUNTY OF }
OF } ss.

suret

to the foregoing undertaking of bail, being sworn, says that he is a resident of and a holder within the state of New York and county of , and is worth dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Sworn to before me, this day of , 18 .

Justice of the Peace.

I hereby allow the foregoing undertaking of bail, and approve of the suret therein named.

Dated this day of , 18 .

[*Signature.*]

No 109.

§ 193. Commitment.

The within named A. B., having been brought before me under this warrant, is committed for examination to the sheriff of the county of , (or in the city and county of New York,) to the keeper of the city prison of the city of New York.

No. 110.

Commitment for further examination.

The sheriff of county will receive and safely keep within the common jail of said county for further examination , who is charged before me with the offense (briefly state the offense).

Dated, etc.,

Justice of the Peace.

No. 111.

§ 197.

At the close of the examination of the witnesses on the part of the people, the defendant was informed by me of h right to make a statement in relation to the charge against h as required by section 196 of the Code of Criminal Procedure, and after being so informed, he did waive h right to make the same.

[*Signature.*]

No. 112.

§ 198. Statement of Defendant.

Question —What is your name and age?

Answer —

Question —Where were you born?

Answer —

Question —Where do you reside and how long have you resided there?

Answer —

Question —What is your business or profession?

Answer —

Question —Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Answer —

No. 113.

§ 200. Authentication.

COURT, }
COUNTY OF , } ss.

I, , a justice of the of , do hereby certify that at the close of the examination before me of the witnesses on the part of the people in the above action, I informed the defendant that it was h right to make a statement in relation to the charge against h and the nature of the charge was stated to h ; that the statement was designed to enable h if h saw fit to answer the charge and to explain the facts alleged against h ; that h was at liberty to waive making a statement, and that h waiver could not be used against h on the trial; that after being so informed h made the following statement:

Dated at the of , }
this day of 18 . }

[*Signature.*]

No. 114.

§ 201. After Statement or Waiver.

After the waiver of the defendant to make a statement, or after the defendant made a statement, the following witnesses, viz.: were produced, sworn and examined, by and on behalf of the defendant.

[*Signature.*]

No. 115.

§ 204. Testimony.

THE PEOPLE
vs.

Before justice , , , 18 .
Arrested by .

being duly sworn, deposes and says:

Question —What is your name and age?
Answer —
Question —Where do you reside?
Answer —
Question —What is your business or profession?
Answer —

COURT, }
COUNTY OF , } ss.

I, , a justice of the of , do hereby certify that the is the testimony given by , a witness sworn on the part of the who stated his name to be , his age to be , his business or profession to be

Dated at the of ,
this day of 18 . }

[*Signature.*]

No 116.

§ 207. Indorsement to be Made on Depositions and Statement of Defendant in Case of Prisoner's Discharge.

There being no sufficient cause to believe the within named guilty of the offense within mentioned, I order him to be discharged.

[*Signature.*]

No. 117.

§ 207. Notice of Discharge, when Defendant is in Jail.

To the keeper of the common jail of county:

You are hereby required, on the receipt of this communication, to discharge from your custody , who was committed to jail by me, charged with the offense of (set out charge), but who was not held by me to answer the same.

Dated, etc.

Yours, etc.

, Justice of the Peace.

No. 118.

§ 208. Indorsement of Commitment.

It appearing to me by the within deposition (and statement, if any) that the crime therein mentioned [or any other crime according to the fact, stating generally the nature thereof] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same.

No. 119.

§§ 208, 209. Indorsement to be Made on Depositions and Statement of Defendant if Believed Guilty.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same.

[*Signature.*]

No. 120.

§§ 208, 209. Indorsement to be Made on Depositions and Statement of Defendant if Believed Guilty and Crime be not Bailable.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same, and that he be committed to the sheriff of the county of

[*Signature.*]

No. 121.

§§ 208, 210. Indorsement to be Made on Depositions and Statement of Defendant if Crime be Bailable and Bail Taken.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same, and I have admitted him to bail to answer by the undertaking hereto annexed.

[*Signature.*]

No. 122.

§§ 208, 212. Indorsement to be made on depositions and statement of defendant if crime be bailable and defendant admitted to bail, but bail have not been taken.

It appearing to me by the within depositions and statement that the crime therein mentioned of has been committed, and

that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same, and that he be admitted to bail in the sum of dollars, and be committed to the sheriff of the county of until he give such bail.

[*Signature.*]

No. 123.

§ 209. Endorsement of Commitment, Offense not Bailable.

And that he be commited to the sheriff of the county of , (or in the city and county of New York), to the keeper of the city prison of the city of New York.

---

§ 210. Certificate of bail.

And I have admitted him to bail to answer, by the undertaking hereto annexed.

No. 124.

§ 211. Undertaking to Grand Jury.

STATE OF NEW YORK, } ss.
COUNTY. }

Whereas has been duly charged on information before , a justice of the peace of the town of , county of , with the offense of , and the said justice has informed him of his right to be tried by a jury after indictment, and asked him how he would be tried; and whereas, upon his election to be so tried, the said justice did hold the said to answer to the next court to be held in and for the said county of , having authority to inquire, by the intervention of a grand jury, into offenses triable in said county of ;

We, of in the of , by occupation a , and of in the of , by occupation a , and of in the of , by occupation a , jointly and severally undertake that shall appear and answer the charge above mentioned at the next court, to be held in and for the county of , having authority to inquire, by the intervention of a grand jury, into offenses triable in the said county of , and shall, at all times, render himself amenable to the

process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars.

Dated, etc.

[*Signatures.*]

Add acknowledgment and justification clauses and approval.

No. 125.

§ 212. Order for Bail, on Commitment.

(Must be added to the indorsement mentioned in § 208.)

And that he be admitted to bail in the sum of dollars, and be committed to the sheriff of the county of [or in the city and county of New York, to the keeper of the city prison of the city of New York,] until he give such bail.

No. 126.

§ 214. Commitment.

County of *Albany* [or as the case may be].

In the name of the people of the state of New York: To the sheriff of the county of Albany, [or in the city and county of New York, to the keeper of the city prison of the city of New York:]

An order having been this day made by me, that A. B. be held to answer to the court of upon a charge of [stating briefly the nature of the crime], you are commanded to receive him into your custody and detain him, until he be legally discharged.

Dated at *the city of Albany* [or as the case may be] this day of , 18 .

No. 127.

§ 214. Commitment where Crime is not Bailable, and where it is Bailable, but Bail is not taken.

court, county of , ss.

In the name of the people of the State of New York:

To the sheriff of the county of

An order having been this day made by me that be held to answer to the court of upon a charge of , you are commanded to receive h into your custody, and detain h until he be legally discharged.

Dated at the of , this day of , 18 .

[*Signature.*]

No. 128.

§ 215. Undertaking of Witness without Sureties

court, county of , ss.:

I, , of No. street, of the , in said county, acknowledge myself to be indebted to and owe the people of the state of New York, the sum of hundred dollars, to be made and levied of my goods and chattels, lands and tenements, to the use of the said people — if default shall be made in the condition following:

The condition of this recognizance is such, that if the above bounden , shall personally appear and testify at the next court of to be held in and for the said , to give evidence as a witness on behalf of the said people against arrested and held to answer the charge of as well to the grand jury as to the petit jury, and do not depart the said court without leave; then this recognizance to be void and of no effect; otherwise to remain in full force and virtue, and the said will pay to the people of the state of New York the said sum of hundred dollars.

Taken, subscribed and acknowledged before me, this day of , 18 .

[*Signature.*]

No. 129.

§§ 215, 216. Undertaking of Witness with Sureties.

court, county of ss.:

Be it remembered, that on this day of , 18 , of in the county of by occupation a and of in the county of by occupation a and of in the county of by occupation a sureties, personally came before me, justice of the peace of the of , in said county, and acknowledged themselves each, jointly and severally, to be indebted to the people of the state of New York, in the sum of hundred dollars, to be made and levied of his goods and chattels, lands and tenements, to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such that if the bounden shall personally appear and testify at the next court to be held in and for the said city or county of , to give evidence as a witness on behalf of the said people, against , arrested and held to answer the charge

of , as well to the grand jury as to the petit jury, and do not depart the said court without leave, then this recognizance to be void and of no effect; otherwise to remain in full force and virtue. The said sureties will pay to the people of the state of New York the said sum of hundred dollars.

Taken, subscribed and acknowledged the day and year first above written, before me.

[*Signature.*]

Add acknowledgment, justification and approval.

No. 130.

§ 216. Order that Witness give Security for Appearance.

COURT, }
OF .}
THE PEOPLE
vs.

Whereas, , a witness examined before me, on the part of the people in the above action, is a material witness for the people therein; and whereas, I am satisfied by proof on oath that there is reason to believe that said will not appear and testify on the part of the people at the next court of to be held in and for the county of , to which the statements and depositions in the above action are to be sent, I do hereby order that the said enter into a written undertaking in the sum of hundred dollars, with suret that he will appear and testify on the part of the people at the next court of to be held in and for the county of .

Dated the day of , 18 .

[*Signature.*]

No. 131

§ 218. Commitment for Neglecting to give Security for Appearance.

COURT, }ss.
COUNTY OF
To of the said city, greeting

Whereas, it appears by the examination of taken on oath, on the day of , 18 , before me, , a justice of the peace of the of as a witness upon a charge made on oath by the said , before me, the said justice, against . That he, the said , is a

material witness against the said in regard to the said charge.

And whereas, being satisfied by due proof on oath, that there was good reason to believe that the said would not fulfill the conditions of a recognizance to appear and testify as a witness on the trial of the said unless security was required for that purpose, I, the said justice, did require the said to enter in a recognizance, with two sufficient sureties, in the sum of dollars, conditioned for the personal appearance at the next court , to be held in and for the county of , to testify and give evidence on behalf of the people against the said for the offense aforesaid: whereupon the said neglected and refused, and still doth neglect and refuse to enter into such recognizance with such sureties as aforesaid.

These are, therefore, to command you, in the name of the people of the state of New York, the said forthwith to convey and deliver into the custody of the said , the body of the said

And you, the said , are hereby required to receive the said into your custody, in the place provided by you, pursuant to the statute in such case made and provided, for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and h there safely keep until he shall enter into such recognizance, with such surety as aforesaid, or be otherwise discharged according to law. Hereof fail not at your peril.

Witness the said at the of and county aforesaid, the day of , 18 .

[*Signature.*]

No. 132.

§ 227. Order to Draw Grand Jury.

(Caption as in No. 142.)

In the Matter of Drawing Grand Jurors, etc.

It is hereby ordered that the clerk of draw, according to law, a grand jury to serve at the next court of to be held, in and for the county of , at the court-house in the of , on the day of , 18 .

No. 133.

§ 227. Order of Board of Supervisors for Grand Jury.

At a regular meeting of the board of supervisors of the county of , held at the of , N. Y., on the day of , 18 , it was, by majority vote,

Resolved, that , the clerk of county be, and he is hereby ordered to draw, according to law, a grand jury to serve at the next court of to be held in and for the county of , at the court-house in the of , on the day of , 18 .

Dated, etc.

Chairman, etc.

No. 134.

§ 227. Certificate of Clerk.

STATE OF NEW YORK, }
COUNTY OF , } ss.

I, , clerk of the board of svpervisors of county, do hereby certify that the within is a true and correct copy of resolution, and of the whole thereof, adopted by the board of supervisors, on the day of , 18 .

Clerk of Board, etc.

No. 135.

§ 245. Oath of Foreman of Grand Jury.

You, as foreman of this grand jury, shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge; the counsel of the people of this state, your fellows' and your own you shall keep secret; you shall present no person from envy, hatred or malice; nor shall you leave anyone unpresented through fear, favor, affection or reward, or hope thereof; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God.

No. 136.

§ 246. Oath of Grand Jurors.

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God!

No. 137.

§ 247. Separate Oath of Grand Jurors.

If, after the foreman and the grand jurors then present are sworn, any other grand juror appear, and be admitted as such, the oath, as prescribed in section 245, must be administered to him, commencing, "You as one of this grand jury," and so on, to the end of section 245, *supra*.

No. 138.

§ 268. Indorsement of Indictment.

A true bill.

(Signed)

Foreman of the Grand Jury.

No. 139.

§ 276. Indictment, General.

Court of oyer and terminer of the county of [stating the proper county]; or

Court of oyer and terminer of the city and county of New York; or

Court of sessions of the county of [stating the proper county]; or

Court of general sessions of the city and county of New York; or

City court of the city of [stating the proper city].

The People of the State of New York
against
A. B.

The grand jury of the [here insert the name of the county, or of the city, or of the city and county, in which the indictment is found], by this indictment, accuse A. B. of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a misdemeanor, having no general name such as libel, assault, or the like, insert a brief description of it as it is given by statute]; committed as follows:

The said A. B., on the day of eighteen hundred and , at the town [or city or village, as the case may be] of , in this county [here set forth the act charged as an offense].

A. B.,

District Attorney of the county of .

No. 140.

§ 301. Bench Warrant.

County of Albany, [or as the case may be].

In the name of the people of the state of New York:

To any peace officer in this state. An indictment having been found on the day of , eighteen hundred and , in the court of sessions of the county of Albany [or as the case may be], charging C. D. with the crime of [designating it generally].

You are therefore commanded, forthwith to arrest the above-named C. D., and bring him before that court [or if the indictment have been sent or removed to another court], before the court of oyer and terminer of that county [or as the case may be], to answer the indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of Albany, or as the case may be, or in the city and county of New York, to the keeper of the city prison of the city of New York.

City [or town] of , the day of , eighteen hundred and .

By order of the court.

E. F., *Clerk*, or G. H., *District Attorney of the county of* .

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§ 303. Indorsement on Bench Warrant, Offense Bailable.

The defendant is to be admitted to bail in the sum of dollars.

No. 141.

§ 302.

(In case of misdemeanors, add to the body in last No. , the following clause), "or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

No. 142.

§ 317. Order Setting Aside Indictment.

At a term of the court of oyer and terminer, held in and for the county of , at the court-house in the of N. Y., on the day of , 18 .

Present— Hon. , Justice.

COURT OF OYER AND TERMINER.

PEOPLE, ETC.,
v.

A motion having been made to set aside the indictment in this action, on the ground that it was not found, indorsed or presented, as prescribed in sections 268 and 172 of the Penal Code, or that some person was present with the grand jury during the expression of their opinion, or the giving of their votes on said indictment [as the case may be], and the attorney for the defendant having been heard in support of the motion and the district attorney in opposition thereto, and it appearing that such irregularity did occur.*

Ordered that said indictment be, and the same is hereby, set aside, and that the defendant be discharged from custody and his bail be exonerated (or that the case be re-submitted to the same or another grand jury).

No 143.

§ 319. Order to Discharge.

At a term of the court of oyer and terminer, held in and for the county of , at the court-house in the of N. Y., on the day of , 18 .

Present — Hon. , Justice.

COURT OF OYER AND TERMINER.

PEOPLE, ETC.
v.

A motion having been made to set aside the indictment in this action, on the ground that it was not found, indorsed or presented, as prescribed in sections 268 and 272 of the Penal Code, or that some person was present with the grand jury during the expression of their opinion, or the giving of their votes on said indictment [as the case may be], and the attorney for the defendant having been heard in support of the motion and the district attorney in opposition thereto, and it appearing that such irregularity did occur.

Whereupon the case was directed to be resubmitted to the present grant jury, which has been discharged without finding a new indictment against said ;

Ordered, on motion of his attorney, that he be, and he is hereby, discharged from custody and his bail exonerated.

No. 144.

§§ 323, 324. Demurrer.

COURT OF OYER AND TERMINER — COUNTY OF

PEOPLE, ETC.
v.

The defendant, above named, demurs to the indictment presented by the grand jury, on the day of , 18 , charging him with the crime of , on the following grounds:

First. That the crime charged in the indictment is not within the local jurisdiction of the county.

Second. That the facts set forth in the indictment do not constitute a crime.

Wherefore, he asks the judgment of the court that his demurrer be allowed, the indictment be dismissed, and he be discharged from custody (or bail be exonerated or money refunded, as case may be).

Dated, etc.

Attorney for Defendant.

No. 145.

§ 334. Pleas.

If the defendant plead guilty to the crime charged in the indictment, the defendant pleads that he is guilty.

If he plead guilty to any lesser crime than that charged in the indictment, the defendant pleads guilty to the crime of [naming it].

If he plead not guilty, the defendant pleads not guilty.

If he plead a former conviction or acquittal, the defendant pleads that he has already been convicted [or acquitted, as the case may be], of the crime charged in this indictment, by the judgment of the court of [naming it], rendered at [naming the place], on the day of

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No. 146.

§ 336. Plea of Insanity.

COURT OF , COUNTY OF .

THE PEOPLE, ETC.
v.

The above-named defendant , pleads not guilty to the crime of charged in the indictment; and further that, at

the time or times specified therein, he was of unsound mind and wholly irresponsible for his acts.

Dated, etc.

Attorney for Defendant.

No. 147.

§ 346. Affidavit for Removal and Stay.

COURT OF OF COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK,
against

City and county of , ss.

of said , being duly sworn says, that he is the defendant in the above entitled criminal action. That he has been indicted by the grand jury of county for the offense of which offense is more specifically defined and is alleged to be in the indictment under the provisions of . That said indictment was returned by the said grand jury on the day of 18 , to the court of in and for the county of ; that deponent was arraigned on said indictment on the day of 18 , and as deponent is informed by his counsel and verily believes the trial of said indictment against him has been set down for trial on the day of 18 , in said court of ; that as deponent is informed and verily believes that this action against deponent involves the decision of very important matters, as

That great popular prejudice and feeling have been aroused by *ex parte* examinations as to, etc.

Deponent further says that the crime charged against him, as he is advised and verily believes, is a and upon conviction he could be subjected to imprisonment in a state prison for

Deponent further says that as he is advised by his counsel who resides in the of to whom he has fully and fairly stated the case in this action, he has a good and substantial defense upon the merits, to the indictment in this action as he is advised by his said counsel after such statement made as aforesaid and as he verily believes; deponent further says that he is advised by his said counsel that this is a proper case to be presented to the court of and that his said counsel intends in good faith and on behalf of deponent to make application to the supreme court for the removal of said indictment into the court of , and therefore deponent desires that an order may be granted staying the trial herein upon said indictment until a proper application can be made for the removal of said indictment and until a decision upon said applica-

tion. Deponent further says that he is advised and verily believes that such an application for removal can only be made to the supreme court, upon notice of at least ten days to the district attorney of the county where the indictment is pending, and that therefore the first opportunity that his counsel would have to present such application would be at the special term of the supreme court which is stated to be held on the of 18 , which would be the day of 18 .

Deponent further says that no other or previous application has been made for the order desired herein.

Venue and jurat.

No. 148.

§ 346. Notice to District Attorney.

COURT OF OF COUNTY:

THE PEOPLE OF THE STATE OF NEW YORK,
against

Please take notice, that upon an affidavit of , dated , 18 , hereto annexed , and the order staying the trial of the indictment herein, dated , 18 , copies of which have heretofore been served upon you and upon the indictment against the defendant herein, a motion will be made at a special term of the supreme court of the state of New York, to be held at the in the of New York, on the day of , 18 , at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order to remove the indictment presented by the grand jury to the court of of county, against the defendant from the said court of of county to the court of of county, and for such other and further relief as may be just, and the court deem proper to grant.

Dated , 18 .

Yours, etc.,
Attorney for defendant.

To , district attorney of county.

No 149.

§ 348. Stay.

COURT OF , COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK,
vs.
,
.

On reading and filing the affidavit of , bearing date the day of , 18 , hereto annexed, showing that an indictment for has been presented by the grand jury of county to the court of thereof, against the above named defendant and is now pending therein, and that said defendant is about to make a motion to the supreme court at special term to have the said indictment removed from the said court of of said county, to the court of oyer and terminer of said county:

It is hereby ordered that to enable this said motion to be heard, the trial and all proceedings upon such indictment be and the same are hereby stayed until the hearing and decision of such motion, viz.: until the day of 18 , for the hearing of such motion and thereafter until decision is entered thereon.

Dated at .

No. 150.

§ 344. Application for the Removal of an Indictment.

SUPREME COURT — COUNTY OF

THE PEOPLE OF THE STATE OF NEW YORK,
vs.

To the Supreme Court:

The petition of respectfully shows that, at a stated term of the court of sessions, held in and for the county of in said state, on the Monday of , 18 , (or as the case may be), an indictment was duly presented by the grand jury of said county to said court against your petitioner, wherein your petitioner was charged with having, on the day of , 18 , at the of , N. Y., committed the offense of ; that a certified copy of said indictment is annexed to, and made part of, this petition (here state facts showing present condition of case); that your petitioner has fully and fairly stated the case to , his counsel, who resides at , N. Y., and that he has a good and substantial defense upon the merits of said indictment, as he is informed by said counsel, after such statement made as aforesaid, and verily believes to be true (here set forth, with clearness and particularity, the peculiar facts and circumstances which render a removal expedient and proper, under either subdivision of section 344); that no prior application has been made for this purpose.

And your petitioner will ever pray, etc.

Dated , 18 .

[*Signature.*]

STATE OF NEW YORK, }
COUNTY OF } ss.

, the petitioner above named, being duly sworn, says that he has heard read the foregoing petition, subscribed by him, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters, therein stated to be alleged on information and belief, and, as to those matters, he believes it to be true.

Sworn to before me, this }
day of , 18 . } [*Signature.*]

No. 151.

§ 346. Notice of Application for the Removal of an Indictment.

court of , county.

THE PEOPLE OF THE STATE OF NEW YORK, }
v. }
. }

SIR.—Please to take notice that, on the petition of , hereto annexed, an application will be made to the supreme court, at a special term thereof, to be held at the court-house in the of , N. Y., on the day of , 18 , at o'clock A. M., of that day, or as soon thereafter as counsel can be heard, for an order removing the indictment in the above entitled action from the court of to the court of oyer and terminer, and for such other and further relief as may be just and proper.

Dated, , 18 .

Yours, etc.

Defendant's Attorney.

To District Attorney of County.

No. 152

§ 344. Order Removing Indictment.

At a special term of the Supreme Court, held at the court-house, in the city of , on the day of 18 .

Present.—Hon. , Justice.

Supreme court, county.

THE PEOPLE OF THE STATE OF NEW YORK,
v.
.

Upon reading and filing the annexed application of defendant and a certified copy of the indictment against him charging him with , presented and filed at a court of sessions (or as case may be), held in and for the county of , on the Monday of 18 ; and after hearing , attorney for defendant, in favor of said application, and , district attorney of said county, in opposition thereto;

Ordered, that said indictment be, and the same is hereby, removed from the court of sessions of the county of (or as case may be), to the court of oyer and terminer, to be held in and for said county, (or to the court of oyer and terminer of the county of), and that the trial of said defendant be had in the court last mentioned.

These forms may be readily adapted for an application under section 22.

No. 153.

Order for Removal under § 352.

(Follow No. 152 to end, and add.)

And it is further ordered, that the sheriff of the county of (where defendant is imprisoned,) deliver the defendant into the custody of the sheriff of the county of , (to which the action is removed).

No. 154.

Recognizance to accompany order removing indictment when the defendant is not in confinement.

COURT OF OYER AND TERMINER.

THE PEOPLE, ETC.,
v.
.

STATE OF NEW YORK,
COUNTY OF } *ss.*

Whereas, upon the written application of the said , the supreme court, in pursuance of the provisions of the statute, has removed the indictment against the said , presented

and filed in the court of , on the Monday of 18 , for , from the said court of to the court of oyer and terminer, to be held in and for the county of , and directed the trial of the said , on said indictment, to be had in the last mentioned court;

Now, therefore, the said and of in the county of by occupation a , and of in the county of by occupation a , sureties, jointly and severally undertake to pay to the people of the state of New York the sum of dollars, if default is made in the following conditions:

The condition of this obligation is such that if the said personally appear at the court of oyer and terminer to be held in and for the county of , at the court-house in the of , on the day of , 18 , and at such other time as such court shall appoint, and shall stand trial upon the said indictment, and shall not depart from said court of oyer and terminer without leave, then this recognizance to be void, otherwise to remain in full force and effect.

[L. S.]
[L. S.]
[L. S.]

Add acknowledgment and justification clauses, and approval.

Though chap. 8, title 5 of part IV. does not expressly authorize a recognizance in such case, the court may require it as a condition to ordering a removal.

No. 155.

§ 380. Challenges for Actual Bias.

COURT OF , COUNTY OF .

THE PEOPLE, ETC.,
v.

The above named defendant challenges , a juror drawn to serve on the trial of this indictment, on the ground that there exists, on the part of such juror, such a state of mind, in reference to the case, or to this defendant, that he can not try the issues impartially and without prejudice to the substantial rights of this defendant.

Dated, etc.

Attorney for Defendant.

No 156.

§ 380. Challenge for Implied Bias.

(Title of action as in last form.)

The above named defendant hereby challenges , a juror to serve on the trial of this indictment, on the following grounds:

(Here state one or more of the causes specified in section 377.)

A challenge may be oral, but must be entered upon the minutes of the court. Section 380.

No. 157.

§ 414. Oath of Officers.

You do solemnly swear that you shall retire with the jurors now present in court and in this trial; that you will safely keep them together until the next meeting of this court and return them thereto without delay, and that in the meantime you will suffer no person to speak to or communicate with them, nor to do so themselves on any subject connected with this trial. So help you God.

No. 158.

§ 438, 440. Special Verdict.

COURT OF .—COUNTY OF .

THE PEOPLE, ETC.,
v.

We, the jurors in the above entitled action, find, from the evidence submitted to us, the following conclusions of fact:

(Here state separately and intelligently the facts found by the jury.)

Dated, etc.

(Jurors' signatures.)

No. 159.

§ 441. Notice of Argument on Special Verdict.

COURT OF .—COUNTY OF

THE PEOPLE, ETC.,
v.

SIR.—Please to take notice that the special verdict, rendered by the jury in the above entitled action, will be brought to argument at the present term of this court, on the day of , 18 ,

at the opening of the court on that day, or as soon thereafter as counsel may be heard.

Dated, etc. Yours, etc.,

To , Attorney for Defendant.
District Attorney.

No. 160.

§ 454. Form of Verdict. Insanity.

We find the prisoner not guilty, and acquit him upon the ground that he was laboring under such a defect of reason as not to know the nature and quality of the act he was doing [or not to know that the act was wrong.]

No. 161.

§ 454. Order of Commitment.

At a court of oyer and terminer, held in and for the county of , at the , in the of , on the day , 18 .

Present.—Hon. , Justice.

COURT OF OYER AND TERMINER.

THE PEOPLE, ETC.,
v.

The jury having acquitted the said , of the crime of , whereof he was charged in the trial now just concluded, on the ground of insanity, and certified such fact with their verdict, and the court deeming his discharge dangerous to the public peace or safety;

Ordered, that the said be committed to the state lunatic asylum at , and that the sheriff of the county of take the said to said asylum, to be there kept until discharged by due course of law.

No. 162.

§ 455. Bill of Exceptions.

Bill of exceptions, amendments, and notice to settle same, can be readily framed by following the forms given, in like cases, in works of practice, under Code of Civil Procedure.

No. 163.

§ 456. Settling Exceptions.

The foregoing bill containing the exceptions herein are hereby settled and signed by me, this day of 18 .

No. 164.

§ 465, sub. 7. Affidavit for New Trial.

(See similar form under Code of Civil Procedure.)

No. 165.

§ 469. Affidavit on Motion in Arrest of Judgment.

(Title of action.)

STATE OF NEW YORK, }
COUNTY OF . } ss.

, being duly sworn, says: That he resides at in said county; that he is the attorney for , the defendant in this action; that said was tried on an indictment charging him with , before this court and a jury, on the day of 18 , and was found guilty by said jury as charged on the same day.

Deponent further says that the court has no jurisdiction over the subject of the indictment (state the facts showing want of jurisdiction), or (that the facts set forth in the indictment do not constitute a crime.)

[*Signature.*]

Jurat.

No. 166.

§ 469. Notice of Motion.

(Title of action.)

SIR.—Please to take notice that, on the indictment herein, the evidence taken on the trial of this action, all other proceedings heretofore had herein, and the affidavit hereto annexed, a motion will be made to the court, on the day of , 18 , for an order arresting judgment against the above-named defendant, and for such other relief as may be just.

Dated, etc.

Yours, etc.,

Attorney for Defendant.

To

District Attorney.

No. 167.

§ 477. Bench Warrant.

The bench warrant must be substantially in the following form:

County of *Albany* [or as the case may be].

In the name of the people of the state of New York — To any sheriff, constable, marshal or policeman in this state. A. B. [SEAL] having been on the day of , 18 , duly convicted in the *court of sessions of the county of Albany* [or as the case may be], of the crime of [designating it generally].

You are therefore commanded, forthwith to arrest the above-named A. B., and bring him before that court for judgment; or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of *Albany* [or as the case may be, or in the city and county of New York, to the keeper of the city prison of the city of New York].

City of *Albany* [or as the case may be], the day of , 18 .

By order of the court.

E. F., Clerk.

No. 168.

§ 487. Warrant of Commitment after Conviction.

(Title of action.)

STATE OF NEW YORK }
COUNTY OF , } ss.

In the name of the people of the state of New York:

To and to keeper of the jail, greeting:

Whereas, was, on the day of , 18 , duly tried before me and a jury, and was, by said jury, convicted of the crime of , and was afterwards, by me, in due form of law, sentenced to imprisonment in the county jail for the term of [or fine and imprisonment, as the case may be];

Now, you are hereby commanded to receive the said into your custody and detain him until the judgment of the said court is satisfied.

Dated, etc.

Jus. Sup. Ct. (or other Court.)

No. 169.

§ 491. Death Warrant.

The people of the state of New York:

To the agent and warden of the state prison at N. Y., greeting:

Whereas, at a court of oyer and terminer held in and for the county of , at the , in the of N. Y., on the day of , 18 , by and before , one of the justices of the supreme court of the state of New York presiding, was convicted of the crime of murder in the first degree, and was thereupon sentenced to the punishment of death, to be inflicted by causing to pass through his body a current of electricity of sufficient intensity to cause death, and continuing the application of such current until he be dead, within the week of 18 :

Now, therefore, we do, by this warrant, command you to do execution of the foregoing sentence upon some day within the week thus appointed, at the place and in the manner prescribed by law.

Given under the hand and seal of the undersigned, who constituted [L. S.] the said court of oyer and terminer, this day of , 18 .

,
Justice Sup. Ct.

No. 170.

§ 496. Inquiry into Sanity of Person Sentenced to Death.

STATE OF NEW YORK, }
COUNTY OF . } ss.

It appearing to me that there is reason to believe that A. B., lately convicted of murder before , at a court of oyer and terminer, held at , , and who is now under sentence of death in the jail of said county, has become insane since the said conviction, I do therefore, in pursuance of § 496 of the Code of Criminal Procedure, concur with C. D., sheriff of county, in calling a jury to make inquest whether the said A. B. be of sane mind or no. And I do hereby order and direct the said sheriff to impanel a jury of twelve persons of his county, qualified to serve as jurors in courts of record, to examine and make inquest as to sanity of said A. B.

Dated .

E. F., Justice of the Supreme Court or County Judge.

No. 171.

Id. Notice to District Attorney.

To D. C. H., Esq., District Attorney:

Sir: Take notice that with the concurrence of Hon. E. F., justice of the supreme court [or county judge, as the case may be], I shall proceed to impanel a jury and make inquest to determine as to the

sanity of A. B., lately convicted of murder at a court of oyer and terminer held at , , and who is now under sentence of death in the jail of county, on the day of , 18 , at o'clock, . M., at .

Dated , .

C. D., Sheriff of county.

No. 172.

Id. Oath to Jurors.

You do each for yourself swear that you will well and truly inquire whether A. B., the prisoner now here, be of sane mind or no, and that you will true inquest make thereof, according to the evidence. So help you God.

No. 173.

Id. Where Juror is Challenged.

You shall true answers make to such questions as shall be put to you touching the objection or challenge to you as a juror. So help you God.

No 174.

Id. To Witness where Juror is Challenged.

You shall true answers make to such questions as shall be put to you touching the challenge of J. K., a juror. So help you God.

No. 175.

§ 497. Subpœna by District Attorney.

In the name of the people of the state of New York: To G. H.: You are commanded that, laying aside all business, you be and appear at , in the , on the day of , 18 , to testify and give evidence upon an inquest then and there to be taken before C. D., sheriff of said county, to determine whether A. B., a prisoner therein confined and now under sentence of death, be insane or no, and hereof fail not at your peril.

Dated , .

D. C. H., District Attorney, county of .

No. 176.

Id. Oath to Witness on Inquest.

The evidence you shall give touching the sanity of A. B., the prisoner now here, shall be the truth, the whole truth, and nothing but the truth. So help you God.

No. 177.

§ 498. Inquisition as to Sanity of Prisoners.

STATE OF NEW YORK, }
COUNTY OF . } ss.

Inquisition taken before the undersigned, sheriff of county, with the concurrence and by order of Hon. T. R. W., justice of the supreme court, as to the sanity of A. B., now confined in the jail of said county under sentence of death, at the said jail upon the oaths and affirmations of J. K., etc., twelve qualified persons of said county summoned by me to inquire as to the sanity of the said A. B.

The said jurors being each duly sworn and charged to inquire touching the sanity of said prisoner, do upon their oaths and affirmations, say that the said A. B., is not of sound mind but is of insane mind (as the case may be.)

In witness whereof, we, the said sheriff, as well as the said jurors, have to this inquisition set our hands and seals at the time and place aforesaid.

C. D., Sheriff, [L. S.]

[L. S.] { G. H., I. J., } Jurors.

No. 178.

§ 500. Inquiry into Pregnancy of Female Sentenced to Death. Notice to District Attorney.

To D. C. H., District Attorney, county.

Sir: Take notice that in pursuance of § 500 of the Code of Criminal Procedure, it appearing to me that there is reasonable ground to believe A. B., a female convicted of murder at the court of oyer and terminer, held at, etc., and now in the jail of this county under sentence of death, is pregnant and quick with child, I shall proceed to impanel a jury of six physicians to inqaire and make inquest as to her pregnancy at in the on the day of , 18 , at o'clock in the noon.

Dated , .

C. D., Sheriff of county.

No. 179.

Id. Subpœna of District Attorney.

In the name of the people of the state of New York: To G. H.:

You are commanded that laying all business aside, you be and appear at , in the , on the day of , 18 , at o'clock in the noon, to testify and give evidence upon an inquest then and there to be taken before C. D., sheriff of said county, to determine whether A. B., a female prisoner, now confined in the jail of said county under sentence of death, be pregnant or quick with child or no; and hereof fail not at your peril.

Dated , .

D. C. H., District Attorney, county.

No. 180.

Id. Oath of Jurors.

You do each for yourself swear that you will well and truly inquire whether A. B., prisoner now before you, be pregnant or quick with child or no, and that you will true inquest make thereof according to the evidence. So help you God.

No. 181.

Id. Oath to Challenged Juror.

You shall true answers make to such questions as shall be put to you touching the objection or challenge to you as a juror. So help you God.

No. 182.

Id. Oath to Witness on Challenge to Juror.

You shall true answers make to such questions as shall be put to you, touching the challenge of J. K., a juror. So help you God.

No. 183.

Id. Oath to Witness on Inquest.

The evidence you shall give upon this inquest, whether A. B, the prisoner now here, be pregnant or quick with child or not, shall be the truth, the whole truth, and nothing but the truth. So help you God.

No. 184.

§ 560. Id. Inquisition as to Pregnancy.

STATE OF NEW YORK, }
COUNTY OF . } ss.

Inquisition taken before the undersigned, sheriff of county at , in said county on the day of , 18 , upon the oaths and affirmations of J. K. &c., six physicians of said county [or as the case may be], summoned by me to inquire whether A. B., a female prisoner now in the jail of said county, under sentence of death, be pregnant or quick with child or no. And the said jurors each being sworn and charged to inquire whether the said A. B. be pregnant or quick with child, and upon their oaths and affirmations say that the said A. B. is now pregnant and quick with child [or as the case may be].

In witness whereof we, the said sheriff as well as the said jurors, have to this inquisition set our hands and seals at the time and place aforesaid.

[L. S.] C. D., Sheriff. J. K., L. M., } Jurors. [L. S.]

No. 185.

§ 503. Order to Bring Defendant Sentenced to Death, before the General Term or Oyer and Terminer.

SUPREME COURT.

THE PEOPLE, ETC., vs. }

On reading and filing the application of the attorney-general (or district attorney) in the above entitled action, whereby it appears that the above named defendant was on the day of , 18 , at a court of oyer and terminer held in and for the county of , at in said county, before Hon. , justice of the supreme court, convicted of the crime of murder in the first degree, and was thereupon sentenced to the punishment of death, to be executed within the week beginning with the day of , 18 ,and said sentence of death has not been executed, although the time specified thereby has passed, and that said judgment and sentence still remain in full force, now on motion of , attorney-general of the state of New York (or , district attorney), it is ordered, that , sheriff of county, be and he hereby is directed and commanded to bring and produce the said before our general term of the supreme court (or court of oyer and terminer) at the , on

the day of , 18 , at o'clock M. to do and receive what shall then and there be considered and adjudged concerning the said

Dated , .

Signed, T. R. W.,
Justice Supreme Court.

No. 186.

§ 507. Invitation to Certain Officers to be Present at Execution.

SIR.— Pursuant to section 507 of the Code of Criminal Procedure, you are hereby invited to be present at the execution of , at the state prison, at , N. Y., on the day of , 18 , at o'clock M.

To Hon. , , Agent and Warden.
Justice Supreme Court.

No. 187.

§ 506. Certificate of Execution.

STATE OF NEW YORK, }
COUNTY OF . } ss.:

I, , the agent and warden of the state prison at , N. Y., and the other public officers, physicians, citizens and ministers of the gospel, whose names are hereto subscribed, do certify that , who was setenced by the court of oyer and terminer, held in and for the county of , on the day of , 18 , to be executed within the week of 18 , was, on the day of , 18 , at o'clock M., in pursuance of the said sentence, executed by causing to pass through his body a current of electricity of sufficient intensity to cause death and continuing the application of such current until he was dead, in the state prison at , N. Y.; and we, the undersigned, do certify that we witnessed the said execution, and that the same was conducted in conformity to the sentence of the court and the provisions of the Criminal Code.

In witness thereof, we have, at at the said state prison, subscribed our names hereto, this day of , 18 .

, Agent and Warden.
, Justice Supreme Court.
, District Attorney.
, Sheriff.
, .
, .

No. 188.

§ 512. Warrant for Habitual Criminal.

STATE OF NEW YORK, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To .

Whereas, complaint has this day been made by of the of , in said county, on oath, before one of the justices of the peace of the of , that, on the day of , 18 , at the of , in said county, one , who has been adjudged an habitual criminal, was found, without being able to account therefor, to the satisfaction of the said justice (in possession of , a deadly or dangerous weapon (or tool, instrument or material adapted to, or used by criminals for, the commission of crime); or was found, without being able to account therefor, to the satisfaction of the said justice, in , in said town, under circumstances giving reasonable ground to believe that he was intending or waiting the opportunity to commit the crime of), against the peace of the people of the state of New York, and the form of the statute in such case provided; we, therefore, command you forthwith to take the body of the said , and bring him before the said , at , in the said , with this warrant, and a return of your doings thereon indorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 18 .

,
Justice of the Peace.

No. 189.

Warrant as to Female under Sixteen Years of Age Living in House of Prostitution.

STATE OF NEW YORK, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To .

Whereas, complaint has this day been made by of the of , in said county, on oath, before one of the justices of the peace of the of , that, on the day of , 18 , at the of , in said county, one , a female child, of the age of years, is living, detained and kept in a house and place, No. , street, for the purposes of prostitution;

And, whereas, in the judgment of the said justice, said has just and reasonable cause to suspect that said child is so living, detained and kept as aforesaid, against the peace of the people of the state of New York and the form of the statute in such case provided;

We, therefore, command you forthwith to enter and search said house and place, and bring said child, together with all persons occupying said house or place or in charge thereof, before the said , at the , in the , with this warrant, and a return of your doings indorsed thereon, to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at in said county, the day of , 18 .

, Justice of the Peace.

No. 190.

§§ 522-3. Notice of Appeal by Defendant.

SUPREME COURT:

THE PEOPLE, ETC.
vs.
.

Gentlemen:

Take notice that the defendant above named appeals to the supreme court, at general term, from the judgment of conviction of the crime of rendered against him, by the court of , held at , in and for the county of on the day of , 18 .

Dated , 18 .

Yours, etc.,
M. C., Attorney for Defendant.

To the Clerk of county, and to D. C. H., District-Attorney of county.

No. 191.

§ 524. Notice of Appeal by People.

SUPREME COURT:

THE PEOPLE, ETC.
vs.
.

Gentlemen:

Take notice that the people of the state of New York appeal to the supreme court at general term from the judgment for the defendant above named on demurrer (or as the case may be) rendered by the

court of , held at in and for the county of on the day of , 18 .

Dated , 18 .

D. C. H., District Attorney, county of .

To the Clerk of county and to defendant, (or in case of his absence from county, M. C., his counsel.)

No. 192.

§ 524. Affidavit for Publication of Notice of Appeal.

(Title of action.)

STATE OF NEW YORK, }
COUNTY OF . } ss.

, being duly sworn, says that he is the district attorney of the county of ; that, at a term of the court of , held in and for the county of , on the day of , 18 , an order was granted, arresting the judgment against the defendant in this action; that the people intend to appeal from said order; that said defendant cannot, after due diligence, be found, so as to make personal service, upon him, of the notice of this appeal; and that the counsel, who appeared for the said defendant on the trial does not reside or transact business in the county of .

Jurat.

No. 193.

§ 524. Order of Publication.

(Title of action.) (Caption.)

On reading and filing the annexed affidavit of , and on motion of , district attorney of the county of ;

Ordered, that the notice of appeal on behalf of the people in this action be served on , the defendant herein, by publishing the same in the , a newspaper, published at in the state of New York, for the space of weeks in each issue thereof.

Dated, etc.

No. 194.

§ 527-8. Certificate for Stay on Appeal.

SUPREME COURT:

THE PEOPLE, ETC.
v.
. }

I, the undersigned, a justice of the supreme court of the state of New York, do hereby certify that in my opinion there is reasonable

doubt whether the judgment of conviction rendered in the court of held at in and for the county of against the defendant above named for the crime of should stand.

Dated , 18 .

T. R. W., Justice of Supreme Court.

Under section 529, a notice, such as the trial judge may prescribe, must be given, in case of appeal by defendant from a conviction of felony, to the district attorney of the application for the certificate.

No. 195.

§ 535. Notice of Argument of Appeal.

SUPREME COURT:

THE PEOPLE, ETC., Respd't.
vs.
Appl't.

To D. C. H., District Attorney:

Sir: Take notice that the appeal in this action will be brought on for argument at a general term of the supreme court to be held at in on the day of , 18 .

Yours, etc.,

M. C., Attorney for Appellant.

No. 196.

§ 543. Order of Reversal.

At a general term of the supreme court, held in and for the judicial district, at the in the of N. Y., on the day of , 18 .

Present.—Hon. , Presiding Justice.
Hon. , } Associate Justices.
Hon. ,

(Title of Action.)

The appeal in this action having been duly brought to argument before this court, and after hearing of counsel for the defendant, and , district attorney of the county of , for the people;

It is ordered and adjudged that the judgment of conviction in the above entitled action be, and the same is hereby reversed, and that the defendant have a new trial.

No. 197.

§ 554. Bail by Police Officers.

We, A. B., defendant, and , residing at number , in , and C. D., residing at , hereby jointly and severally undertake that the above A. B., defendant, shall appear and answer the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the day of , eighteen hundred and , at o'clock, and there remain to answer, subject to any order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then he will pay to the people of the state of New York the sum of

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No. 198.

§ 560. Order of Justice as to Notice to be Served on District Attorney of Application to Bail.

COURT OF COUNTY OF }
THE PEOPLE
against

An application having been this day made to me by the above named defendant for his admission to bail upon the charge of , upon which he has been held by me , and the said defendant having shown good and sufficient reasons for a notice of less than two days to the district attorney of his application for admission to bail;

I do hereby order that a notice of be served on the district attorney of county of the application of the defendant for admission to bail on said charge.

Dated Albany, , 18 .

[*Signature.*]

No. 199.

§§ 561, 562. Certificate Granting Application to Bail.

COURT, COUNTY OF } *ss.*

I, a justice of the of , do hereby certify that an application was, on the day of , 18 , made to me for the admission to bail of , held by me to answer the crime of , and I did grant the said application and fix the sum

in which bail may be taken at hundred dollars, with suret .

Dated at the of , this day of , 18 .

No. 200.

§ 568. Bail Before Indictment.

An order having been made on the day of , eighteen hundred and , by A. B., a justice of the peace of the town of [or as the case may be], that C. D. be held to answer upon a charge of [stating briefly the nature of the crime], upon which he has been duly admitted to bail in the sum of dollars.

We, [C. D., defendant, if the defendant join in the undertaking]; of [stating his place of residence and his occupation] and E. F., and G. H., [stating place of residence and occupation] surety or sureties [as the case may be], hereby undertake, jointly and severally, that the above-named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted; and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York, the sum of dollars [inserting the sum in which the defendant is admitted to bail].

[*Signature.*]

No. 201.

§ 571. Notice of Application for Bail in Cistie.

To D. C. H., esq., district attorney:

SIR.—Take notice that upon the day of , 18 , at o'clock, . M., application will be made to Hon. , at his office in the of , to admit to bail , now confined in the county jail [or, as the case may be,] on a charge of , and that the following persons will be proposed as sureties, viz.: A. B. merchant, residing at , C. D. physician, residing at .

That the said A. B., is the owner of real estate in the of , known as No street, in said valued at dollars, on which there is a mortgage of dollars, [or no incumbrance, as the case may be.]

That the said C. D., is the owner of certain bonds, stock, [or other

personal property, describing it] valued at dollars, and there are no judgments against him.

Dated , 18 .

M. C., Attorney for ,
Def't.

No. 202.

§ 572. Affidavit of Justification.

COUNTY OF
OF . } ss.

suret to the foregoing undertaking of bail, being sworn, says that he is a resident of and a holder within the state of New York and county of , and is worth dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Sworn to before me, this
day of 18 . }

No. 203.

§ 575. Order Allowing or Disallowing Bail.

COURT,
OF
COUNTY OF }
THE PEOPLE,
vs.

I do hereby the bail given by the defendant in the above action before me, on the day of 18 .

Dated at Albany, this day of 18 .

[*Signature.*]

No. 204.

§ 576. Order for Discharge on Bail.

To the sheriff of the county of , [or, in the city and county of New York, to the keeper of the city prison of the city of New York]: A. B , who is detained by you on a commitment to answer a charge for the crime of [designating it generally], having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody.

No. 205.

§ 581. Bail after Indictment.

An indictment having been found on the day of , eighteen hundred and , in the court of sessions of the county of Albany [or as the case may be,] charging A. B. with the crime of [designating it generally,] and he having been duly admitted to bail in the sum of dollars.

We, A. B., defendant [if the defendant join in the undertaking,] and C. D., surety or sureties, [as the case may be,] of [stating his place of residence and occupation,] and E. F., of [stating his place of residence and occupation,] hereby jointly and severally, undertake that the above-named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars [inserting the sum in which the defendant is admitted to bail.]

No. 206.

§ 586. Certificate of Deposit Instead of Bail.

THE PEOPLE OF THE STATE OF NEW YORK
against

Whereas, heretofore and on the day of , 18 , an order was made by , admitting the above named defendant to bail, on giving an undertaking in the sum of dollars, on a certain charge [and indictment, as the case may be,] of [state offense.]

This is to certify that the said , defendant above named has deposited with me, this day, the amount of dollars, the sum mentioned in said order, as security for his appearance pursuant to such order, instead of the said undertaking of bail pursuant to § 586 of the Code of Criminal Procedure.

Dated, , 18

A. G., County Treasurer,
county.

No. 207.

§ 590. Certificate of Surrender by Principal in Exoneration of Bail.

THE PEOPLE, ETC.,
v.

I hereby certify that the defendant above named, who heretofore gave bail on his arrest on an indictment now pending against him for burglary [or as the case may be], has this day surrendered himself, in exoneration of his said bail by delivering himself into my custody together with a certified copy of the undertaking of bail so given as aforesaid.

Dated,

J. A. H., Sheriff of county.

No. 208.

Id. Certificate of Surrender by Bail.

THE PEOPLE OF THE STATE OF NEW YORK
against

I hereby certify and acknowledge that , a surety given for the appearance of the above named defendant on an indictment now pending against him for burglary [or as the case may be] has this day surrendered the said defendant in exoneration of him as bail, by delivering him into my custody, together with a certified copy of the undertaking of bail given by said surety, pursuant to § 590 of the Code of Criminal Procedure.

Dated,

J. A. H., Sheriff of county.

No. 209.

§ 591. Deputation to Arrest Principal, by Surety, Indorsed on Copy Undertaking.

Know all men by these presents that I, of , being one of the sureties mentioned in the within copy undertaking of bail, have deputized, authorized and empowered, and by these presents do hereby deputize, authorize, and empower in my place, stead and behalf of the of , at any place within the state of New York, to take, arrest, secure, and surrender to the sheriff of the connty of , in the state of New York, the defendant named in the within copy undertaking in exoneration and discharge

of my said undertaking as bail for said , in the cause therein mentioned, and to employ such persons and assistants as may be necessary to effect such purpose.

In witness whereof I have hereunto set my hand this day of 18 .

Signed,

Executed and delivered in the presence of

C. D.

No. 210.

§ 594. Order Remitting Forfeiture at Same Term of Court.

At a term of the court of sessions, held in and for the county of , at the , in the of N. Y., on the day of 18 .

Present: Hon. , County Judge.

, } Justices of Sessions.

THE PEOPLE, ETC., v. }

The recognizance of the above-named defendant having been forfeited at the present term of this court, and the said having satisfactorily excused his neglect, and renewed his bail for his appearance at the next court of sessions; now, on motion of , of counsel for defendant,

Ordered that the forfeiture of the undertaking or deposit above mentioned be, and the same is hereby, discharged, and the order for the prosecution thereof be vacated, with (state terms.)

No. 211.

§ 597. Order Remitting Forfeiture of Bail.

At a term of the county court, held in and for the county of , at the , in the of , N. Y., on the day of , 18 .

Present: Hon. , County Judge.

IN THE MATTER OF THE FORFEITED RECOGNIZANCE OF }

On reading and filing the affidavit of , with proof of due service thereof and of notice of motion, and after hearing , in support of the motion, and , district attorney of the county of , in opposition thereto, it is, on motion of said ,

Ordered, that the said order forfeiting the said recognizance and directing its prosecution be, and the same is hereby, vacated and set aside, and (if begun) the action commenced thereon by the district attorney be discontinued, upon the payment, by said , of the costs and expenses incurred therein, amounting to the sum of dollars.

No. 212.

§ 600. Order for Re-commitment.

At a term of the court of sessions, held in and for the county of , at the , in the of , N. Y., on the day of 18 .

Present: Hon. , County Judge.

, } Justices of Sessions.

(Name of Court.)

IN THE MATTER OF }

It appearing to the satisfaction of the court that was indicted by the grand jury of the county of , on the day of , 18 , for the crime of , and was duly bailed to appear at the court of , to be held in and for the county of , at the of , on the day of , 18 ; and it appearing that he wholly failed to appear and made default in appearing;

Ordered, that the said be forthwith arrested by any sheriff, constable, marshal or policeman in this state and committed to (the officer to whose custody he was committed at the time he was admitted to bail), to be detained until legally discharged.

No. 213.

§ 605. Bail after Re-arrest.

An order having been made on the day of eighteen hundred and by the court of [naming the court,] that A. B. be admitted to bail in the sum of dollars, in an action pending in that court against him in behalf of the people of the state of New York, upon an [information, presentment, indictment, or appeal, as the case may be.]

We, A. B., defendant [if the defendant join in the undertaking,]

and C. D., surety of [stating his place of residence and occupation,] and E. F., surety of [stating his place of residence and occupation,] hereby jointly and severally, undertake that the above-named A. B. shall appear in that or any other court in which his appearance may be lawfully required, upon that [information, presentment or appeal, as the case may be] and shall at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the state of New York the sum of dollars, [inserting the sum in which the defendant is admitted to bail.]

No. 214.

§ 608. Justice's Criminal Subpœna.

In the name of the people of the state of New York: To

You are hereby commanded to appear before the undersigned a justice of the peace of the of , at office in said on the day of , 18 , at o'clock M., as a witness in a criminal action prosecuted by the people of the state of New York against

Dated at the of , county of , N. Y.
this day of , 18 .

[*Signature.*]

No. 215.

§ 608. Subpœna.

In the name of the people of the state of New York: To

You are hereby commanded to appear before the undersigned , a justice of the peace of the town of , at his office in said town on the day of 18 , at o'clock M., as a witness in a proceeding then and there pending before the said justice, for the purpose of investigating whether an offense has been committed.

Dated at, etc.,

,
Justice of the Peace.

No. 216.

§ 609. Subpœna — Grand Jury.

In the name of the people of the state of New York: To

You are hereby commanded to appear before the grand jury of the county of , at the court house in the of , county of , New York, on the day of , 18 , at o'clock M., as a witness in a criminal action prosecuted by the people of the state of New York against

Dated at the of , county of , N. Y., this day of , 18 . }

District Attorney.

Or by order of the court,

Clerk.

No. 217.

Id. Proof of Service.

COURT.

THE PEOPLE

v.

I hereby certify that I served the within subpœna upon the following *witnesses* therein named, viz.:

at , in the of county, N. Y., on the day of , 18 , by showing said subpœna to said *witnesses and to each of them*, and delivering a copy thereof to h personally.

Dated this day of , 18 .

No 218.

§ 612. Subpœna.

In the name of the people of the state of New York:

To A. B.

You are commanded to appear before *C. D., a justice of the peace of the town of* , [or "the grand jury of the county of ," or the court of sessions of the county of , or as the case may be,] at [naming the place,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the state of New York, against E. F.*

Dated at the town of , [as the case may be,] the day of , 18 .

"G. H., justice of the peace," [or "I. K., district attorney," or "By order of the court, L. M., clerk," as the case may be].

No. 219.

§ 613. Subpœna duces tecum.

And you are required also to bring with you the following, [describing intelligibly the books, papers or documents required.]

No. 220.

§§ 614-15. Return of Service of Subpœna.

county of , ss.

I do hereby certify and return that I did, on the day of 18 , at the of , N. Y., serve the within subpœna on therein named, by delivering it, or a copy hereof, or by showing it to said personally.

Dated , this day of , 18 .

No. 221.

§ 619. Warrant of Attachment against Witness.

The people of the state of New York to the sheriff of the county of , greeting:

We command that you attach , and bring him [L. S.] forthwith before our court of oyer and terminer [or court of sessions], held in and for our county of , at , to answer unto us for certain trespasses and contempts against us in not obeying our writ of subpœna, commanding him to appear on , before said our court [or in not appearing in pursuance of his recognizance] to testify on an indictment there to be tried against on the part of the people [or defendant], and you are further commanded to detain him in your custody until he shall be discharged by our said court; and have you then and there this writ.

Witness, , justice of the supreme court [or county judge] of said county, at , in in said county, the day of , 18 .

J. L., Clerk.

D. C. H., District Attorney,

or

L. M., Attorney for defendant.

Endorsed: Allowed this day of , 18 .

T. R. W., Justice Supreme Court.

No. 222.

§ 622. Affidavit for Order to Examine Witness Conditionally.

(Title of action.)

STATE OF NEW YORK, }
COUNTY OF . } ss.

, being duly sworn, says that he resides at ; that at the last term of the court of in and for the county of , he was indicted for the crime of ; that immediately after said indictment, he gave bail to appear at the next term of said court to be held at the in the of , on the day of 18 ; that , who resides at , in the county of , is a material and necessary witness for deponent, and his testimony is material to the defense of the action (state facts showing its materiality); that said is about to leave the state (set forth the circumstances showing this fact); and that there is great probability that deponent will be unable, by reason of his absence, to procure the attendance of as a witness at the trial of this action at the time and place above-named, or at any subsequent time.

(Jurat.)

No. 223.

§ 625. Order to Examine Witness Conditionally.

(Caption and title as in No. 210.)

On reading and filing the affidavit of the above-named defendant, hereto annexed, whereby it appears to the satisfaction of the court that the examination of the witness is necessary to the attainment of justice, and on motion of , of counsel for said defendant,

Ordered that , who resides at , in said county, be examined conditionally before Hon. , a judge of this court, at the in the on the day of , 18 ; and that a copy of the order and of the affidavit on which it was granted be served on district attorney of the county of , on or before the day of , 18 .

If the application is not made during term time, it must be made to one of the judicial officers named in section 624. It is then a judge's order, and the examination must be taken before the officer granting the order. (Section 626.)

No. 224.

§ 658. Order Appointing Commission.

At a term of the oyer and terminer, held in and for the county of , at the , in the of , on the day of 18 .

Present.—Hon. , Justice.

COURT OF OYER AND TERMINER:

THE PEOPLE, ETC.
v.
.

The above named defendant, , having pleaded the defense of insanity to the indictment for the crime of (or, being under indictment, but not under sentence of death):

Ordered, that , counselor-at-law, M. D., and , be, and the same are hereby, appointed a commission to examine the said , and to report to the court, with all convenient speed, as to his sanity at the time of the examination.

Due notice of the time and place of executing this commission shall be given to the district attorney of the county of .

Dated at .

Justice Supreme Court.

No 225.

§ 658. Oath of Commissioners.

STATE OF NEW YORK,
COURT OF .

THE PEOPLE, ETC.
v.
.

county of ss

, counselor-at-law, M. D., and , being severally duly sworn, does each for himself say, that he will faithfully and fairly determine the questions referred to them, and make a just and true report, according to the best of his understanding.

,

Jurat.

,

.

No. 226.

§ 658. Notice to District Attorney.

COURT OF .
THE PEOPLE, ETC.
v.
.

SIR.—Please to take notice that the undersigned, appointed commissioners, by an order of the above entitled court duly made, to inquire as to the sanity of , now confined in the jail of , charged with the crime of (or, now under indictment, but not under sentence of death), will proceed to execute said commission, at said jail, on the day of , 18 , at o'clock, in the noon.

Dated at , this day of , 18 .

Yours, etc.

,
,
,
Commissioners.

To Hon.
District Attorney of county.

No. 227.

§ 658. Report of Commissioners.

COURT OF .
THE PEOPLE, ETC.
v.
.

To the court of .

The undersigned, commissioners duly appointed by this court to inquire as to the sanity of the above named , now confined in the jail of the county of , do, upon their oaths, hereby report as follows:

(Here state the facts found by the commissioners separately, with their opinion thereon).

Dated at this day of , 18 .

,
,
,
Commissioners.

No. 228.

§ 664. Compromise of Crimes. Acknowledgment of Satisfaction.

county of , ss.

I, A. B., of , do hereby acknowledge to have received of C. D., of , the sum of dollars in full satisfaction for

the injury and damage done to me at the said on the day of , 18 , by the said C. D., in assaulting and beating me (or as the case may be), and for which offense I made complaint on oath on the day of , 18 , to police justice, and which said complaint is now pending and undetermined (or an indictment having been found against the said C. D. thereon on the day of , 18 , in the court of in and for county), and I desire that no further proceeding be had thereon against the said C. D.

A. B.

Add acknowledgment.

No. 229.

Id. Order for Compromise.

Court of , county of .

THE PEOPLE OF THE STATE OF NEW YORK,
vs.
C. D.

On reading and filing the acknowledgment of satisfaction executed by A. B. for the injury and damage done to him by C. D., indicted for , a misdemeanor, which indictment is now pending in this court, and on motion of the defendant it is ordered that on payment of dollars, costs incurred (or otherwise, if the court so direct) that all proceedings be stayed upon the prosecution of said indictment, and the defendant discharged therefrom.

(Signed), W. L. L., Justice Supreme Court.

No. 230.

§ 664. Warrant to Discharge Defendant.

STATE OF NEW YORK,
COUNTY OF } *ss.*

In the name of the people of the state of New York:

To the keeper of the common jail of said county, greeting:

Whereas, , upon whose information on oath was arrested for assault and battery against him, and duly committed to your custody on the day of , 18 , where he still remains, has duly executed an acknowledgment of satisfaction before me for said assault;

Now, you are hereby commanded forthwith to discharge the said from your custody in said jail, unless detained upon some other warrant of commitment.

Dated, etc., ,

Justice of the Peace.

No. 231.

§ 676. Summons against Corporation.

The summons must be in substantially the following form:

County of *Albany*, [or as the case may be.]

In the name of the people of the state of New York:

To the [naming the corporation.]

You are hereby summoned to appear before me, at [naming the place], on [specifying the day and hour], to answer a charge made against you, upon the *information of A. B.*, for [designating the offense, generally.]

Dated at the *city* [or town] of , the day of , 18 .

G. H., Justice of the Peace.
[Or as the case may be.]

No 232.

Proof of Service.

County, ss.

, being duly sworn says, that on the day of , 18 , at in the county of state of New York, he served the within summons upon president or other head of the corporation, or on the secretary, cashier or managing agent thereof, by delivering a true copy thereof to, and leaving the same personally with, said

Subscribed and sworn to before me, this day of 18 . } [*Signature.*]
Justice.

No. 233.

§§ 678, 679.

COURT, }
COUNTY OF . }
THE PEOPLE
vs.

I hereby certify that there is sufficient cause to believe the above-named defendant guilty of the offense charged.

[*Signature.*]

No. 234.

§ 681. Summons.

Court of oyer and terminer of the county of , [state the proper county or court, as the case may be].

THE PEOPLE OF THE STATE OF NEW YORK
v.
THE COMPANY.

You are hereby summoned to appear in this court and, by demurrer or plea in writing duly verified, answer an indictment filed against you by the grand jury of this county, on the day of , charging you with the crime of [designating the offense generally], at a term of the court of oyer and terminer [or as the case may be] of this county, at [naming the place], on [stating the day and hour], and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of , the day of 18 .

(Or by order of the court, District Attorney.
Clerk, as the case may be.)

No. 235.

§ 703. Venire.— Criminal.— Special Sessions.

STATE OF NEW YORK,
COUNTY OF } ss.
OF

The people of the state of New York:
To any constable of the county of , greeting:

You are hereby commanded to summon *twelve* good and lawful men in the of , in said county, qualified to serve as jurors, and not exempt from such service by law, and who shall be in nowise of kin either to , the complainant, or to , the defendant, to be and appear before the undersigned, at office , in the of , in said county, on the day of , 18 , at o'clock in the noon, to make a jury for the trial of said , charged with the offense of . And have you then and there this order, with a certified list of the persons you shall have summoned annexed to the same.

Witness my hand, at the said of , this day of , 18 .

[*Signature.*]

I hereby certify that by virtue of the within venire, I have personally summoned the following persons named below to attend as

herein prescribed as jurors to try the offense mentioned within, viz.:

Dated this day of , 18 .

Constable.

To , Esq.,
Justice.

No. 236.

§ 711. Oath to Jury.

You do swear [or you do solemnly affirm, as the case may be] that you will well and truly try this issue, between the people of the state of New York and A. B., the defendant, and a true verdict give, according to the evidence.

No. 237.

§ 713. Oath of Officers.

You do swear that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court.

No. 238.

§§ 717, 718. Judgment of Court of Special Sessions.

COURT ,
CITY OR TOWN OF , COUNTY OF .

THE PEOPLE OF THE STATE OF NEW YORK,
against } *Judgment* 18 .

The defendant was this day convicted, on a trial by the court or a jury, or on a plea of guilty of the offense of , and the court sentenced h to imprisonment in the of this county, days, and pay a fine of dollars, and be imprisoned until paid, not exceeding days.

[*Signature.*]

No. 239.

§§ 721, 722. Record of Conviction—Special Sessions. Plea of Guilty. Trial by Court.

Court, county of

THE PEOPLE OF THE STATE OF NEW YORK, against

The above named having been brought before me, , a justice of the of , charged with and having requested to be tried by a court of special sessions; and the above named having been thereupon duly convicted upon a plea of guilty.

I have adjudged that he be imprisoned in the of the of days, and pay a fine of dollars, and be imprisoned until it be paid, not exceeding days.

Dated at the of , the day of 18 .

[*Signature.*]

No. 240.

§ 721. Record of Conviction—Special Sessions. Plea of Not Guilty.

COURT OF COUNTY OF

18 .

THE PEOPLE OF THE STATE OF NEW YORK, *vs.*

The above named having been brought before me, a justice of the of , charged with and having requested to be tried by a court of special sessions; and the above named having thereupon pleaded not guilty, and demanded or failed to demand a jury trial, and having been thereupon duly tried and upon such trial duly convicted:

I have adjudged that he be imprisoned in the of the county of , days and pay a fine of dollars, and be imprisoned until it be paid, not exceeding days.

Dated at the of , the day of 18

[*Signature.*]

No. 241.

§ 721. Certificate of Conviction—Plea of Guilty.

Court of special sessions or police court.

County of Albany, town of Berne [or as the case may be].

THE PEOPLE OF THE STATE OF NEW YORK,
against
A. B.

January 1, 18 .

The above-named A. B. having been brought before C. D., justice of special sessions, justices of the peace [or other magistrate as the case may be] or police justice, of the town [or city or village] of [as the case may be] charged with [briefly designating the offense], and having thereupon pleaded guilty or not guilty [as the case may be], and demanded [or failed to demand, as the case may be] a jury, and having been thereupon duly tried, and upon such trial duly convicted. It is adjudged that he be imprisoned in the jail of this county, days [or pay a fine of dollars and be imprisoned until it be paid, not exceeding days, or both [as the case may be].

Dated at the town [or city] of , the day of , 18 .

C. D.,
Justice of the peace or police justice or other magistrate [as the case may be] of the town [or city] of [as the case may be].

No. 242.

§ 721. Warrant to Commit a Child under Sixteen Years. Plea, Not Guilty.

court, county of , ss.

In the name of the people of the state of New York:

To any sheriff, constable, marshal, or policeman in the county of , and to the superintendent of the house of refuge for the reformation of juvenile delinquents in the city of New York, greeting:

Whereas, on the day of , 18 , was brought before me, , a justice in and for the and county of , charged on the oath of , which oath was believed by me, the said justice, with, on this present day, at the of ;

And whereas the said justice, immediately and before any further proceedings were had, informed the said of the charge against him, and of his right to the aid of counsel in every stage of

the proceedings, and the said charge was then and there distinctly read and stated to the said , who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person;

And whereas the said testimony was given and evidence was had in the presence and hearing of the said , he , the said ,having previously thereto been allowed a reasonable time to send for and advise with counsel;

And whereas it was ascertained by said justice, that said was years old on the day of , 18 ;

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge and offense, and the said was thereupon convicted of the charge and offense aforesaid; and it was adjudged and determined by said justice that the said should be committed to and confined in the house of refuge for the reformation of juvenile delinquents, in the city of New York, until he should be thence discharged according to law;

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent. And you, the said superintendent, are hereby commanded to receive the said into your custody, in the said house of refuge, and there safely keep until he shall be thence discharged according to law.

Given under my hand, at the of aforesaid, this day of , 18 .

[*Signature.*]

No. 243.

§ 722. Warrant to Commit Child under the Age of Sixteen Years. Plea of Guilty.

court, county of , ss.

In the name of the people of the state of New York: To any sheriff, constable, marshal or policeman of the county of Albany, and to the superintendent of the house of refuge for the reformation of juvenile deliquents in the city of New York, greeting:

Whereas, on the day of , 18 , was brought before me, , justice in and for the and county of , charged on the oath of

which oath was believed by me, the said justice, with, on this present day, at the of ;

And, whereas, the said justice immediately and before any further proceedings were had, informed the said of the charge against h and of h right to the aid of counsel in every stage of proceedings, and the said charge was then and there distinctly read and stated to the said and he, the said was given a reasonable time to send for and advise with counsel;

And, whereas, he, the said did then and there plead guilty to the said charge;

And, whereas, it was ascertained by said justice that the said was years old on the day of 18 ;

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge and offense, and the said was thereupon convicted of the charge and offense aforesaid, and it was adjudged and determined by said justice that the said should be committed to, and confined in, the house of refuge for the reformation of juvenile deliquents, in the city of New York, until he should be thence discharged according to law;

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent. And you, the said superintendent, are hereby commanded to receive the said into your custody, in the said house of refuge, and h there safely keep until he shall be thence discharged acccording to law.

Given under my hand, at the of aforesaid, this day of 18 .

[*Signature.*]

No. 244.

§ 725. Certificate to be annexed to copy certificate of conviction.

STATE OF NEW YORK, } ss.
COUNTY OF }

I certify that I have compared the foregoing with the original certificate made and signed by me as a court of special sessions, and that the same is a correct copy thereof and transcript therefrom, and of the whole thereof.

Witness my hand, at , this day of , 18 .

Justice of the Peace.

No. 245.

§ 734. Commitment to Special Sessions.

COURT, }
COUNTY OF , }
THE PEOPLE
vs.

The sheriff of the county of is required to receive and detain who stands charged before me for to answer the charge before a court of special sessions, to be held in the of .

Dated at the of , the day of , 18 .

[*Signature.*]

No. 246.

§ 738. Bail to Special Sessions.

A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of , [as the case may be] with the offense of [designating the offense generally]. We undertake jointly and severally that he shall appear thereon from time to time, until judgment, at a court of special sessions in the town, or village [or city] of , [as the case may be] competent to try the case, or that we will pay to the county of [naming the county in which the court is held] the sum of dollars, [inserting the sum fixed by the magistrate].

Dated at the town [or city] of [as the case may be].

No 247.

§ 774. Oath to Foreman of Coroner's Jury.

You do swear that you will well and truly inquire how and in what manner and when and where, the person lying here (or whose body you have just viewed, as the case may be), came to his death (or was wounded) and who such person was, and into all the circumstances attending such death (or wounding), and by whom the same was produced; and that you will make a true inquisition thereof, according to the evidence offered to you, or arising from the investigation of the body. So help you God.

No. 248.

Id. Oath to Jurors.

The same oath which the foreman of this inquest hath on his part taken, you and each of you do now take, and shall well and truly observe and keep on your part. So help you God.

No. 249.

Id. Oath to Witness.

The evidence you shall give upon the inquest touching the death (or wounding) of , or of the person whose body has been viewed) shall be the truth, the whole truth and nothing but the truth. So help you God.

No. 250.

Id. Oath to Interpreter.

You solemnly swear that you will truly interpret to the witness the oath that shall be administered to him upon this inquest, and shall also truly interpret between the coroner, the jury and the witness. So help you God.

No. 251.

§ 775. Subpœna by Coroner.

In the name of the people of the state of New York:

To :

We command you and each of you, that all business and excuses being laid aside, you be and appear before the undersigned, one of the coroners of the county of at on this day of 18 , at o'clock in the noon (or forthwith), to testify upon an inquest then and there to be had upon the body of deceased, (or upon the body of a person whose name is unknown), and hereof fail not a your peril.

Witness the hand of said coroner this day of , 18 .

P. L., Coroner.

No. 252.

§ 776. Attachment by Coroner against Witness.

The people of the state of New York.

To the sheriff of the county of , greeting:

We command you that you attach and bring him before the undersigned, one of the coroners of said county, at in said county, forthwith to testify upon a certain inquest (as set forth in the subpœna) and also to answer all such matters as shall be objected against him, for that he, having been duly subpœnaed to attend upon such inquest has refused or neglected to attend in conformity to such subpœna, and have you then and there this writ.

Witness the hand of the said coroner this day of , 18 .

P. L., Coroner.

No. 253.

§ 777. Coroner's Inquest.

STATE OF NEW YORK,
COUNTY OF } ss.
OF

At an inquest taken this day of , in the year of our Lord one thousand eight hundred and , for the people of the state of New York, in the of , in said county, before , one of the coroners of said county, on view of the body of , then and there lying dead upon the oath of

good and lawful men of said county, who being sworn and charged to inquire how and after what manner the said came to death, do say, upon oath aforesaid, that came to death by

---

No. 254.

§ 778. Testimony taken by Coroner.

county of , ss.

Examination of witnesses produced, sworn and examined on the day of 18 , before , one of the coroners of the said county and jurors, good and lawful men of the said county duly summoned and sworn by the said coroner to inquire how and in what manner, and when and where (or person unknown) came to his death (or was wounded) and who such person was, and into all the circumstances attending such death (or wounding) and to make true inquisition, according to the evidence, arising from the investigation of the body.

G. H., being produced and duly sworn and examined, testifies and says that (give testimony in full.)

(Signed) G. H.

Subscribed and sworn to before me, this day of , 18 . } P. L., Coroner.

I do hereby certify that the foregoing testimony of the several witnesses appearing upon the foregoing inquest was reduced to writing by me, and that the said testimony is the whole of the testimony taken on such inquest, and that the same is correctly stated as given by the witnesses respectively.

P. L., Coroner.

No. 255.

§ 781. Coroner's Warrant.

County of Albany [or as the case may be].

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman in this county:

An inquisition having been this day found by a coroner's jury

before me, stating that A. B. has come to his death by the act of C. D. by criminal means [or as the case may be], as found by the inquisition; or, information having been this day laid before me that A. B. has been killed or dangerously wounded by C. D., by criminal means [or as the case may be], you are hereby commanded forthwith to arrest the above-named C. D. and bring him before me, or in the case of my absence or inability to act, before the nearest or most accessible coroner in this county.

Dated at the city of Albany [or as the case may be], this day of , 18 .

E. F.,
Coroner of the County of Albany.
[Or as the case may be.]

No. 256.

Id. Warrant of Commitment by Coroner.

STATE OF NEW YORK, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To the sheriff of county:

An order having been this day made by me that be held to answer to the court of upon a charge of ;

You are commanded to receive him in your custody and detain him, until he is legally discharged.

Dated at , this day of , 18 .

, Coroner.

No. 257.

§ 788. Coroner's Statement to Supervisors.

Statement and inventory of all moneys and other valuable things found with or upon all persons on whom inquests have been held by and before the undersigned, one of the coroners in and for the county of for and during the year commencing on the day of 18 .

Upon whom found.	Articles found.	Disposition thereof.
A. B., etc.	Enumerate property.	Delivered to county treasurer, etc.

(Signed) P. L., Coroner.

county of , ss.

P. L., one of the coroners of said county being duly sworn says

that the foregoing statement and inventory is in all respects just and true to the best of his knowledge and belief, and that the moneys and other articles therein mentioned have been delivered to the treasurer of county and to the legal representative of the persons therein mentioned as therein stated.

P. L., Coroner.

Subscribed and sworn to before me , 18 . }

H. R., Notary Public.

No. 258.

§ 792, Subd. 1. Information for Search Warrant.

county of , ss.

, being duly sworn says: That he resides in ; that the following property has been stolen or embezzled from at that is the owner thereof; that said property has been stolen by and is now in his possession, or the possession of at the of aforesaid, or is concealed in in said of ; that the facts upon which this affidavit is based are as follows:

Subscribed and sworn to before me, this day of , 18 . [*Signature.*]

No. 259.

§ 792, Subd. 2. Information for Search Warrant.

county of , ss.

, being duly sworn, says; That he resides in ; that the following property has been used as the means of committing a felony by at or is in the possession of at or is conceal in in ; that the facts upon which this affidavit is based are as follows:

Subscribed and sworn to before me, this day of , 18 . [*Signature.*]

No. 260.

§ 792. Subd. 3.

STATE OF NEW YORK, }
COUNTY OF } ss.

, being duly sworn, says that he resides in the of , in said county; that the following property is in the possession of , at , with the intent to use it as the means of committing a public offense, or is in the possession of

, to whom said has delivered it for the purpose of cancealing it, or preventing its being descovered; that the facts upon which this statement is made are as follows:

[*Signature.*]

Jurat.

The affidavit must name or describe the person, and particularly describe the property, and the place to be searched. Section 793.

No. 261.

§ 797. Search Warrant.

County of Albany [or as the case may be].

In the name of the people of the state of New York: To any peace officer in the county of Albany, [or as the case may be]: Proof by affidavit having been this day made before me, by [naming every person whose affidavit has been taken], that [stating the particular grounds of the application, according to section seven hundred and ninety-two, or if the affidavit be not "positive that there is probable cause for believing that," stating the ground of the application in the same manner.]

You are therefore commanded in the day time, [or at any time of the day or night, as the case may be, according to section eight hundred and one], to make immediate search on the person of C. D., [or "in the building situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be], for the following property: [describing it with reasonable particularity], and if you find the same, or any part thereof, to bring it forthwith before me at [stating the place].

Dated at the city of Albany [or as the case may be], the day of , eighteen hundred

E. F.,

Justice of the peace of the city [or town] of [or as the case may be].

This form can be readily adopted to each subdivision of section 792.

No. 262.

§ 803. Receipt for Property Taken Under a Search Warrant.

I, , a peace officer of the , have taken under a search warrant issued by , a justice of the of , from , from whom it was taken or in whose possession it was found, or from in the said of , where the property hereinafter described was found, no person being there, the following described property:

[*Signature.*]

No. 263.

§ 805. Return of Search Warrant.

I have executed the within search warrant, as I am within commanded, by making diligent search in the place designated in the said warrant for the goods therein described, but cannot find the said goods or any part thereof [or find the goods described in the inventory returned herewith and none other].

A. B., Peace officer.

No. 264.

§§ 805, 806. Inventory and Affidavits Thereto of Property Taken Under Search Warrant.

Inventory of property taken by the undersigned, under and pursuant to the annexed warrant, made publicly and in the presence of , from whose possession it was taken, and of , the applicant for the warrant.

Dated , , 18 . [*Signature.*]

I, the peace officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

Taken, subscribed and sworn, to this day of , 18 . } [*Signature.*]

No 265.

STATE OF NEW YORK.
EXECUTIVE CHAMBER.

The following rules will be observed by the governor of the state of New York in reference to applications for requisitions on governors of other states and territories, and the chief justice of the supreme court of the District of Columbia (U. S. R. S. § 5278; R. S. relating to the District of Columbia, § 843).

The application must be made by the district attorney of the county in which the offense was committed, and must be in duplicate original papers, except indictments, which must be certified copies.

The following must appear by the certificate of the district attorney:

A. The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be accurately spelled, in roman capital letters, for example, JOHN DOE.

B. That in his opinion the ends of public justice require that the alleged criminal be brought to the state for trial, at the public

expense, and that he is willing that such expense be a charge on the county in which the crime was committed.

C. That he believes he has sufficient evidence to secure a conviction of the fugitive.

D. That the person named as agent is a proper person, a public officer (naming his official position), and that he has no interest in the arrest of the fugitive.

E. If there has been any former application for a requisition for the same person growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

F. If the fugitive is known to be under either civil or criminal arrest, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

G. That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

H. That all papers in duplicate have been compared with each other and are, in all respects, exact counterparts.

I. Whether the offense charged is a felony or a misdemeanor, with a concise definition thereof, and a particular reference to the statute, giving chapter, title, article, page and section, together with any amendments thereto, defining the offense and stating the punishment therefor.

J. When more than one year has elapsed since the commission of the crime, a full explanation must be given; and upon an application where no indictment has been found, the reasons therefor must be stated.

1. In cases of false pretenses, embezzlement or forgery, and all offenses known as such prior to the enactment of the Penal Code, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes.

2. Proof by affidavit of *facts and circumstances* satisfying the executive that the alleged criminal has fled from the justice of the state, and is in the state on whose executive the demand is requested to be made, must be given. No mere unsupported allegation will be received or accepted as conclusive upon this point. In addition to the *facts and circumstances* required, it must affirmatively appear what the occupation of the accused at the time of flight was;

whether he was a resident or only in the state transiently; whether he was married; when the alleged fugitive left the state, and in general the previous history of the accused so far as it can be ascertained — in short, the affiant's reasons for his belief that the accused is a fugitive from justice, and whether he is in the surrendering state transiently, or making it his residence, and his occupation therein. If the affidavit be not made by the district attorney or some public officer, the district attorney must certify that the affiant is a respectable person and entitled to credit.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by depositions taken before a *magistrate* (a notary public is not a megistrate within the meaning of the statutes) in support of an information which must always be furnished in such case, and no application will be received or considered which is based on an information standing by itself. Conclusions will not be considered except in connection with the facts and circumstances from which they are drawn.

5. If the crime of forgery is charged, an affidavit of the person whose name is alleged to have been forged, must be produced, or its absence satisfactorily explained.

6. If the crime charged is seduction, corroborative evidence must be furnished by affidavit of one or more witnesses taken before a magistrate whether an indictment has been found or not.

7. Except as to the whereabouts of the accused, the sources of information and belief stated, must be given and the reason why such information is not verified by the person possessing it stated.

8. It should be shown that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, must be furnished upon an application.

9. In all cases of extradition where the fugitive is beyond the jurisdiction of the United States, the application must, in the first instance, be presented to the governor. All such papers must be presented in *triplicate*, and conform to the foregoing rules. The triplicate copies must each be certified by the *magistrate* and must each contain a copy of the information, of the depositions in support thereof, and of a *warrant* issued theron against the accused for the offense charged. Triplicate copies of *all* papers are absolutely necessary. In foreign countries indictments are not recognized and are absolutely useless.

In Canadian extradition each of the three sets of the papers required must contain one of the three triplicate copies of the information,

depositions and one of the three *triplicate original* warrants issued thereupon; also each original warrant must be accompanied by a copy of itself, and all certified in the form given on page 145, sixth Moak's English Reports. Follow closely the practice given in this volume, pages 144–147.

A copy of the rules governing United States extradition will be furnished on application to the state department at Washington.

10. Applications will not be considered unless it affirmatively appears that the alleged fugitive was in this state at the time of the commission of the offense. Extra-territorial crime is not within the extradition laws.

11. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrants, must be duly certified.

12. The district attorney asking a requisition must, within six months, unless sooner requested, after it is issued, make a return, accompanied by the affidavit of the agent named therein, fully stating all proceedings had thereunder and upon the information or indictment on which the same was based.

13. The governor of this state will deliver over to the executive of any other state or territory persons charged therein with crime, only when the demand is accompanied by documents and proofs which are in accordance with the extradition laws.

14. Upon the renewal of an application, for example, on the ground that the fugitive has fled to another state, not having been found in the state on which the first was granted, new papers in conformity with the above rules must be furnished.

15. All rules heretofore issued by the executive, in the matter of the extradition of fugitives from justice, are hereby abrogated.

Approved *January* 1, 1892.

ROSWELL P. FLOWER.
Governor.

No. 266.

Application for Requisition.

STATE OF NEW YORK.
DISTRICT ATTORNEY'S OFFICE,
COUNTY 18 .

To His Excellency the Governor:

SIR.—In compliance with your regulations, I have the honor herewith to make application for a requisition upon the governor of the state of for who stands in this county for the crime of and who, as appears from the annexed affidavit of who responsible person

and entitled to credit, fugitive from the justice of the state.

In support of the application, I enclose herewith, in duplicate, certified copies of the indictment against the said and original affidavits in duplicate alleging the facts required to be established, and respectfully certify:

A That the full name of the person for whom extradition is asked and the name of the agent whom I hereby designate as such is

B. That in my opinion the ends of public justice require that the said be brought to this state for trial, at the public expense, and that I am willing that such expense be a county charge.

C. That I have, as I believe, within my reach, and will be able to produce on the trial, sufficient evidence to insure conviction.

D. That the person named above as agent and proper person to be so designated, and I certify that he ha no private interest in the arrest of the fugitive .

E. No other application has been made, nor has any requisition been issued for th person growing out of the transaction set out in the present indictment.

F. I believe that the criminal named now under arrest in the state of awaiting requisition.

G. That this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

I am informed and believe that the said at the time he fled therefrom resident of this state.

H. That all the papers in triplicate herein have been compared with each other, and are, in all respects, exact counterparts.

I. That the defendant charged with the commission of a under

J. That more than one year has elapsed since the commission of the offense charged in the indictment .

That a warrant has been issued for the arrest of the said and triplicate certified copies of the same, together with the returns thereto, are attached to this application.

I am sir, very respectfully yours,

District Attorney.

No. 267.

Voluntary surrender and waiver of requisition.

STATE OF NEW YORK,
COUNTY OF ————,
OFFICE OF THE SHERIFF,
——— ———, N. Y.

To whom it may concern, greeting:

Whereas, by virtue of a requisition heretofore duly made upon him by the governor of the state of , accompanied by a duly certified copy of an indictment from the authorities of the said state of charging one with having committed the crime of in the said last-mentioned state, his excellency governor of the state of New York, did on the day of in the year of our Lord one thousand eight hundred and , duly issue and transmit his certain warrant for the arrest of the said as a fugitive from the justice of the said state of to the superintendent, or any inspector of police of New York, therein designating one (the agent named in the said requisition on the part of the said state of) as the person into whose custody the said might be lawfully delivered;

And whereas, thereafter and on the day of in the year aforesaid, the undersigned was duly arrested under and by virtue of the said warrant by a of the municipal police of the said city of New York, to whom the said warrant had been duly entrusted for execution, and in whose custody the undersigned is now held by virtue thereof;

And whereas, the undersigned has been duly informed and is now fully aware that before he may be lawfully delivered into the custody of the said as such agent as aforesaid, it is his right and privilege under the laws of the state of New York (unless such right and privilege be waived), to be taken before a judge of the supreme court, of a superior city court, or the presiding judge of the court of general sessions of the city and county of New York, who would thereupon inform him of the cause of his arrest, the nature of the process, and instruct him that if he claim not to be the particular person mentioned in said requisition and the indictment and warrant annexed thereto or in the said warrant so duly issued thereon, he may have a writ of *habeas corpus* upon filing an affidavit to that effect;

Now, therefore, know ye, that the undersigned, acknowledging himself to be the particular person in the said requisition and the indictment and warrant annexed thereto, and also in the warrant so duly issued thereon, mentioned and described as does hereby voluntarily, and not by reason of any threats or undue influence on the part of any person or persons whatsoever, consent to waive, and

does hereby waive, his right to be taken before any or either of such judges for the purposes aforesaid.

In witness whereof, the undersigned has to this consent or waiver duly subscribed his name this day of in the year aforesaid.

In the presence of ——— ———, ——— ———, the officer entrusted with the execution of the warrant of the governor of this state herein, and ——— ———, a counselor-at-law of this state.	———————————————

No. 268.

Affidavit under rule 2.

To comply with rule 2 as to requisition, the facts should be set forth explicitly, and as nearly as possible in manner following:

STATE OF NEW YORK, }
COUNTY OF . } ss.

John Doe, being duly sworn, deposes and says, that a warrant for the arrest of Richard Roe, charging him, the said Richard Roe, with grand larceny in the second degree, has been issued; that a triplicate copy of said warrant and the information and depositions on which said warrant was issued are hereto annexed (if the proceedings are founded upon an indictment and affidavits, those facts should be recited instead of the above), that the facts and circumstances respecting the commission of said offense are correctly stated in said information and depositions. (All after the last parenthesis may be omitted if indictment is found.)

Deponent further says, upon information and belief, that the said Richard Roe is now under criminal arrest and held in custody on said charge by the authorities at Java, in the county of Mocha in the state of Arkansas; that the sources of his information and belief are that a telegram was sent to the chief of police at Java by James Smith, chief of police in the village of Texas, county of Mexico, the place where the offense was committed, requesting the police at Java to arrest said Richard Roe; that an answer thereto has been received to-day from such chief of police at Java stating that the said Richard Roe had been arrested, all of which deponent believes to be true, and that deponent has seen the telegrams received by said Smith.

Deponent further says that he is informed and believes that the said Richard Roe has fled from the justice of this state, and his reasons for such belief are as follows:

That the said Richard Roe left Texas aforesaid on the tenth day of April, 1887; that for more than five years prior thereto he had been a resident of Texas aforesaid, and for six months just preceding his departure he had been in the employ of George Jones; that on the said tenth day of April, 1887, he told deponent that he desired to attend a show which was then exhibiting in Colosse; that he left deponent's store in said village about three o'clock in the afternoon and has not since returned to said village; that in the afternoon of that day deponent made inquiries after the said Richard Roe and learned that instead of attending said show he had taken the train for New Haven in said county, to which point his baggage had that day been checked, as deponent learned; that he thereupon telegraphed to New Haven and found that said baggage had been called for; that deponent found upon investigation that the said Richard Roe had sold or disposed of nearly all of his household property; that he had left his wife in Texas aforesaid utterly destitute of money or means of support, and had told her that he was going to Colosse in said county to look for a situation and would return on the following day; that deponent began to ascertain the whereabouts of the said Richard Roe; that deponent next heard of said Roe in Scriba, then in Parish, and next in Orwell; that deponent's information relative to his whereabouts was obtained through detectives or police officers; that no one has received any letter or word from said Richard Roe directly since leaving Texas; that at the time of his flight said Richard Roe was by occupation a shoemaker, and at the time was a resident of the village of Texas, county of Mexico, state of New York, and was such at the time of the commission of the alleged crime; that he was married twice and was divorced from his first wife; that the said Richard Roe was quite largely indebted; that he had money in his hands which he received as treasurer of the Shoemakers' Association; that he purchased clothing the day of his departure on representations that he was going to Colosse aforesaid to look for a situation and would return on the following day when he would pay for the same, none of which he did; that as to his previous history, its main features, so far as known to deponent, have already been stated therein; that he is in the state of Arkansas only temporarily (or permanently, as the case may be).

Deponent, therefore, by reason of the facts and circumstances set forth above, verily believes and charges the fact to be that the said Richard Roe has fled from the state of New York for the purpose of avoiding arrest for the crime with which he is charged; that he is a fugitive from the justice of this state (the following should be added if it is true) and is now under criminal arrest in the state of Arkan-

sas and held in said state to await his extradition to and return to the state of New York.

JOHN DOE.

Subscribed and sworn to, this first day of June, 18 . }

FRANK W. LOOMIS,
Police Justice of the village of Texas, N, Y.

No. 269.

§ 828. Warrant for the Arrest of a Fugitive from Another State.

(Formal part as in No. 89.)

Information upon oath having been this day laid before me by that had committed in the state of on the day of , 18 , and is now a fugitive from justice in the county of in this state;

You are, therefore, commanded forthwith to arrest the above-named and to bring him before me at my office in the of , N. Y., or in the case of my absence or inability to act, before the nearest and most accessible magistrate in this county.

Dated, etc.

Justice of the Peace.

No. 270.

§ 829. Commitment of Fugitive, etc.

STATE OF NEW YORK, }
COUNTY OF . } ss.

The within named having been brought before me under the warrant in this proceeding, and it appearing to me, from an examination by me had, that he is guilty of the crime charged, and that he is a fugitive from justice as therein set forth, I, therefore, commit the said to the sheriff of the county of (or to the keeper of the common jail) for the space of days (some reasonable time, not to exceed thirty days, exclusive of the day of arrest), or until he shall be discharged by due course of law.

Dated, etc.

Justice of the Peace.

No. 271.

§ 832. Notice to District Attorney.

To , District Attorney of county:

SIR.—Please to take notice that I have this day caused to be arrested one as a fugitive from justice from the state of , who is charged with the crime of , committed in said state.

Dated, etc.

Yours, etc.,

Magistrate.

No. 272.

§ 833. Notice to Governor, etc.

To Hon. , Governor of the State of .

SIR.—The sheriff of county, state of New York, has in charge, subject to your action, one , charged with , committed within your state on the day of , 18 .

Dated, etc.

I am, yours, etc.,

District Attorney of county, N. Y.

No. 273.

§ 840. Bastardy, Application in, by Overseers.

county, ss.

To , Esq., justice of the peace of the county of :

, being pregnant with child, which is likely to be born a bastard, or having been delivered of a bastard child, and become chargeable to said county [or town or city, as the case may be], the undersigned, pursuant to section 840 of the Code of Criminal Procedure of the state of New York, applies to you to make inquiry into the facts and circumstances of the case.

Given under my hand, at the of, this day of , 18 .

Overseer of the Poor.

No. 274.

§ 841. Bastardy, Affidavit of Pregnancy.

county, ss.

The voluntary examination of of , in the of , taken in writing, upon oath before , one of the justices of

the peace of the , who saith she is now with child, and has been so for about months last past, and that the said child is likely to be born a bastard, and to be chargeable to the said town of ; that she is, and has for one year past been, an unmarried woman [or , her husband has continued absent out of this state for one whole year previous to such birth, separate from her and leaving her during that time continuing and residing in this state; and that such child was begotten and will be born during such absence and separation; or that such child was begotten and will be born during the separation of its mother from her husband, pursuant to a decree of a court of competent authority], and that hath gotten her with child of the said bastard child.

Taken upon oath before me this day of , 18 .

Justice of the Peace.

No. 275.

§ 841. Warrant against Reputed Father prior to Birth of Child.

county, ss.

To any peace officer of said county, greeting:

Whereas, upon the application of , overseer of the poor of said , in said county, to me, , one of the justices of the peace of the said county of , I have ascertained by the examination, on oath of , that she is now pregnant of a child, likely to be born a bastard, and to be chargeable to the said county, and [recite examination] is the reputed father of such child; these are, therefore, to command you forthwith to apprehend the said , and bring him before me, at my office, in the town of , in said county of , for the purpose of having an adjudication respecting the filiation of such child, likely to be born a bastard.

Given under my hand this day of , 18 .

Justice of the Peace.

No. 276.

§ 841. Bastardy. Affidavit of Mother after Birth of Child.

county, ss.

The voluntary examination of , of , in the of , taken on oath before me , one of the justices of the peace of the of , who saith, that on the

day of , in the year of our Lord one thousand eight hundred and , at the of , she was delivered of a male bastard child, and that the said child is likely to be chargeable to the county of , aforesaid, and that hath gotten her with child of the said bastard child.

Taken upon oath before me }
this day of 18 . }

,
Justice of the Peace.

No. 277.

§ 841. Warrant against the Father after Birth of Child.

county, ss.

To any peace officer of the county of , and to all and every one of them greeting:

Whereas, , of the said of , a woman, hath, in her examination, taken this day of , 18 , in writing upon oath before me, , one of the justices of peace of the said of , declared on the day of , 18 , at the said of , she was delivered of a male bastard child, and that said child now is, and is likely to continue to be, chargeable to said of , and that is the father of the said bastard child.

And whereas, application hath been made to me by , overseer of the poor of the town of in said county, to make inquiry into the facts and circumstances of the case; and having, upon such inquiry, ascertained that said is the reputed father of such child so born a bastard;

These are, therefore, in the name of the people of the state of New York, to command and authorize you, immediately, to apprehend the said , and forthwith to bring him before me, the undersigned justice of the peace, at the said of , for the purpose of having an adjudication respecting the filiation of such bastard child.

Given under my hand, this day of , 18

, Justice of the Peace.

No. 278.

§ 843. Indorsement to be made by Justice upon the Warrant when Reputed Father Resides in, or is in, Another County.

County of , ss.

I, the within named justice of the peace of the said county,

hereby direct that the penal sum which any bond shall be taken of the within named , shall be dollars.

Dated at , this day of , 18 .

, Justice of the Peace.

No. 279.

§ 843. Indorsement to be made by the Justice in the County where Warrant is to be Executed.

County of , ss.

The within warrant, with the indorsement made thereon by the justice of the peace by whom it was issued, of the sum required to be put in the bond, having been presented to me, a justice of the peace of and residing in said county of , and due proof under oath having been made to me by the oath of , of the signature of the said justice who issued the said warrant, authority is by me hereby given to arrest the within named , in the said county of .

Dated at , the day of , 18 .

, Justice of the Peace.

No. 280.

§ 844. Bastardy—Putative Father's Bond on Arrest in Another County.

Know all men by these presents:

That we, C. D., and R. F., of , in the county of , are held and firmly bound, jointly and severally, unto the people of the state of New York, in the sum of dollars, for the payment whereof to the said people we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of , 18 .*

Whereas, the said C. D., has this day been brought before the undersigned, one of the justices' of the peace of the county of , by virtue of a warrant issued by G. H., one of the justices of the peace of the said county of , whereon the name of the said justice [or, of O. M., one of the justices of the peace of the said county of] is indorsed, with an authority to arrest the said C. D., in the said county of ; in which warrant it is recited that E. B., of , in said county of , upon her examination, on oath, before the said G. H., justice, did declare herself pregnant of a child, which is likely to be born a bastard, and to become chargeable [or did declare that she was, on the day of , at aforesaid, delivered of a bastard

child, which is chargeable to said town [or county]; and upon the said warrant is indorsed the direction of the said G. H., that the penal sum in which any bond should be taken, of the said C. D., should be $; now, therefore, if the said C. D., etc., [insert one of the conditions expressed in § 844], then the above obligation to be void, otherwise of force.

Sealed and delivered in presence of, }
and the surety approved by me, }

{ C. D., [L. S.] }
{ R. F., [L. S.] }
Justice.

No. 281.

§ 845. Certificate of Discharge to be Indorsed on Warrant.

STATE OF NEW YORK, }
COUNTY OF . } ss.

I, , a justice of the peace of in the county of , before whom the within named was brought upon his arrest, in said county, on the within warrant, after it had been indorsed by me (or by , a justice of said county), do hereby certify that the said executed a bond, with two sureties, in the sum indorsed upon said warrant, and that I did thereupon discharge the said from arrest upon the within warrant.

Dated at , this day of , 18 ,

Justice of the Peace.

No. 282.

§ 849. Bastardy; Bond on Adjournment.

Know all men (etc., as in No. 280 down to the * and) the condition of this obligation is such that, whereas, the undersigned, C. D., has this day been brought before , charged upon the oath of aforesaid as the reputed father of a bastard child, with which the said alleges she is pregnant (or of a bastard child lately born of the said); and whereas, at the request of the said , and for sufficient reasons the said determined to adjourn the examination and adjudication respecting such charge, upon the execution of this bond, until the day of , at . M., in ; now, therefore, if the said C. D. shall personally appear before the said , at the time and place last aforesaid, and not depart therefrom without leave, then this obligation is to be void, otherwise of force.

Sealed, etc. [L. S.]
[L. S.]

No. 283.

Subpœna in Bastardy Case.

STATE OF NEW YORK, }
COUNTY OF } ss.

In the name of the people of the state of New York: To .

You are hereby commanded that, laying all other matters aside, you and each of you personally appear before and , justices of the peace of the county of , at the office of , in the of on the day of , 18 , at o'clock M., to testify the truth and give evidence, according to your knowledge, touching the father of a bastard child of which has lately (or is about to be) delivered.

Dated at , this day of , 18 .

, Justice of the Peace.

No. 284.

§ 850. Order of filiation.

court, county of ss.

Whereas, the undersigned, being of said county, having upon the application of , overseer of the poor of the town of in said county, this day associated for the purpose of making an examination touching a bastard child lately born in said town of the body of C. D. (or as the case may be) and chargeable (or likely to be chargeable) to said town of , and of which child the said C. D. is alleged to be the father; and whereas, we have duly examined the said E. B. on oath, in presence of the said C. D., in respect to such charge, and heard the testimony offered in relation thereto, whereby it appears that the said E. B. was on the day of , delivered of a bastard child (or as the case may be) and which is chargeable (or likely to become chargeable) to the said town of , and that said C. D. is the father of said child, we do, therefore, adjudge him the said C. D. to be the father of said bastard child, and order that he pay to the overseer of the poor of said town, for the support of said child, the weekly sum of , so long as the said child shall continue chargeable to said town; and inasmuch as it appears to us, and we find that the said E. B. is in indigent circumstances, we determine that the said C. D. pay to the said overseer of the poor, for the support of said E. B. during the confinement and recovery, the sum of . And we hereby certify that the reasonable cost of arresting the said C. D. and of this order of filiation is the sum of .

Given under our hands, at the town of , this day of , 18 .

} Justices.

No. 285.

§ 851. Bond after Order of Filiation.

Know all men (etc. as in No. 280 down to the * and), the condition of this obligation is such that, whereas by an order this day duly made and subscribed by justice of the peace of the county of , it is adjudged that C. D. is the father of a bastard child o which C E. is pregnant [or as the case may be], which is likely to become [or is] chargeable to said town of ; and it was thereupon ordered by the said justice that [recite the order of filiation]. Now, therefore, if the said C. D. shall pay the sums for the support of the said bastard child and the sustenance of its mother, as ordered by said justice as aforesaid, or shall be at any time hereafter ordered by the court of sessions of the county of , and shall fully and amply indemnify the said town of , and every other town city or county which may have been or may be put to expense for the support of the said bastard or of the said mother during her confinement and recovery, in all not exceeding the sum of hereby fixed and determined upon by the said justices, then this obligation to be void; otherwise of force.

Sealed, etc. [L. S.]
[L. S.]

No. 286.

§ 851. Bond on Appeal from Order of Filiation.

Know all men (as in No. 280 down to the * and). Now, therefore, if the said C. D. shall personally appear at the next court of sessions of the county of , to answer the charge aforesaid and obey its order thereon and not depart said court without leave, then this obligation to be void; otherwise that we will pay the sum of $ fixed and determined upon by the said justices as a full indemnity for supporting the said bastard and its mother.

Sealed, etc. [L. S.]
[L. S.]

No. 287.

§ 852. Commitment.

Court, } ss.
County of . }

The people of the state of New York:

To any peace officer of county, and to the keeper of the county jail of said county, greeting:

Whereas, by an order made the day of , 18 , by and two of the justices of the peace of the of , C. D. is adjudged to be the father of a bastard child born of the body of

E. B. (or with which she is now pregnant), and chargeable (or likely to become chargeable) to the said town of , which said order was duly made after due examination upon application by , overseer of the poor of the of

And whereas, by said order the said C. D. was further directed to pay to the overseer of the poor of the sum of $ weekly and every week for the support of said bastard child for and during so long a time as said child shall so be and remain chargeable, and also the sum of $ directed to be paid by the said C. D. for the support of the said E. B. during her confinement and recovery, she being found to be an indigent person; and in and by said order determination fixing the costs of apprehending the said C. D., and of such order of filiation at the sum of $; and whereas the said C. D. was present at the making of such order and determination, and which together with all other proceedings was by said justices reduced to writing and subscribed by them; and was required by them to pay the said costs and enter into an undertaking with sufficient sureties to be approved by them, for the performance of such order, or his appearance at the next court of sessions of said county of , to answer the charge and obey its order therein, according to section 851 of the Code of Criminal Procedure of the state of New York.

And whereas, the said C. D. has neglected to pay said costs and to enter into such bond as aforesaid:

These are, therefore, to command you the said peace officer, to take the said C. D. and convey and deliver him to the keeper of the common jail of the county of . And you, the said keeper, are hereby commanded to receive the said C. D. into your custody in said jail, and there safely keep him until he shall pay the said costs and execute such bond aforesaid, or he be discharged by the court of sessions of said county.

Given under our hands at the of the day of

[*Signature.*]

No. 288.

§ 855 Order of Filiation in the Absence of the Reputed Father, Apprehended in Another County.

County of , ss.

C. D., having been apprehended in the county of , in the state of New York, by virtue of a warrant and the direction thereon indorsed, of which the following are the copies, to wit: [insert copies] was carried before M. B., Esq., a justice of the peace of the said county of , who took from him, the said C. D., a bond

to the people of the state of New York, with good and sufficient sureties, in the sum directed in the indorsement on said warrant, conditioned that the said C. D. shall appear at the next court of sessions to be holden in the county of , and not depart the said court without its leave; and the said bond having been in due form of law returned to the undersigned G. H., the justice who issued the said warrant, he thereupon immediately called to his aid the undersigned S. T., another justice of the same county, and the said justice proceeded to make examination of the matter, on the day of 18 , at , in said town, and then and there heard the proofs that were offered in relation thereto; by which it was proven that the said E. B., being in the said town of , has been delivered of a bastard child, etc., in said town [or, that the said E. B. is now pregnant of a child, which, when born, will be a bastard], and which is chargeable [or, likely to become chargeable], to said town [or county], and that C. D is the father of said child.

We do, therefore, adjudge him, the said C. D., to be the father of the said bastard child; and, further, we do hereby order that the said C. D. pay to the overseer of the poor of the said town of , [or, to the superintendent of the poor of said county], for the support of said child, the weekly sum of one dollar, so long as the said child shall continue chargeable to said town [or county]; and inasmuch as it appears to us, and we find, that the said E. B. is in (as in form No. 284.)

No. 289.

§ 856. Warrant to Commit Mother Who Refuses to Disclose the name of the Father.

County of , ss.

To any peace officer of said county, greeting:

Whereas we, the undersigned, justices of the peace of said county, are now associated for the purpose of examining into the matter, and making order for the indemnity of the town of , in said county [or for the indemnity of the said county], against the support of a certain child, said to have been born a bastard, of the body of E. B., and chargeable [or likely to become chargeable] to said town [or county] upon the application of E. F., overseer of the poor of said town [or a superintendent of the poor of said county], have required the said E. B., who is now before us, to submit to an examination on oath, in the presence of C. D., who has been brought before us, charged with being the father of said child, to testify touching such charge, and to disclose the name of such father, but the said E. B. wholly refuses to testify and disclose; and inasmuch as it now appears to us, upon due proof thereof, given on oath before us, that

more than a month has elapsed since the said E. B., was delivered of said child, and that she is now sufficiently recovered from confinement. You are, therefore, hereby commanded, in the name of the people of the state of New York, to take the said E. B., and convey her to the common jail of said county, the keeper whereof is required to detain the said E. B., in his custody in said jail until she shall so testify and disclose the name of such father.

Given under our hands at , this day of , 18 .

} Justices.

No. 290.

§ 856. Process to Compel Attendance of Mother before Justices.

County of , ss.

To any peace officer of said county, greeting:

Whereas we, the undernamed justices of the peace of said county, have, upon the application of the overseer of the poor of the town of , in said county [or the superintendent of the poor of said county], associated for the purpose of examining into the matter of a certain complaint made to us by said overseer [or superintendent], that E. B., of said town is now pregnant with a child, which, when born, will be a bastard, and which is likely to become chargeable to said town [or county; or that E. B. has been delivered in said town of a bastard child, which is chargeable, or likely to become chargeable to said town or county]; and C. D. having been brought before us this day, charged to be the putative father of said child. Now, therefore, to the intent that the said E. B. may be examined before us, on oath, and in the presence of the said C. D., touching the father of said child, you are hereby commanded, in the name of the people of the state of New York, to bring the said E. B. forthwith, before us, at the office of the undersigned G. H., in , aforesaid.

Given under our hands at , this day of , 18 .

G. H., S. T., } Justices.

No. 291.

§ 857. Summons Where Mother has Property in Her Own Right.

county of , ss.

To any peace officer of said county, greeting:

You are hereby required to summon E. B., of the town of in said county, to appear before us, the undersigned, justices of the peace of said county, on the day of , instant or two

o'clock in the afternoon, at the office of the undersigned, G. H., to show cause, if any she may have, why we should not make an order for the keeping of a bastard child, said to have been lately born of said E. B., and chargeable (or likely to become chargeable) to said county (or town), by charging the said E. B., with the payment of money weekly, or other sustentation; E. F., overseer of the poor of said town (or superintendent of the poor of said county), having applied to us for that purpose.

Given under our hands, at , this day of , 18 .

G. H., }
S. T., } Justices of the Peace.

No. 292.

§ 857. Support of Child—Order to Compel the Mother to Pay for the.

county of , ss.

Whereas, E. F., one of the superintendents of the poor of said county (or, overseer of the poor of the town of , in said county), has made application to us, two of the justices of the peace of said county, complaining that E. B., of , in said county, was lately delivered, at aforesaid, of a bastard child, which is chargeable (or likely to become chargeable), to said county (or town); and that said E. B. is possessed of property in her own right, and is of sufficient ability to support said child, and desiring that we should examine into the matter. and make order for the indemnity of said county (or town), and whereas, upon examination into the matter of said application, and upon due proof thereof, on oath before us given, and the said E. B., although present at such examination, not showing any sufficient cause to the contrary (or, and the said E. B., neglecting to appear before us and show cause, if any she might have, to the contrary, although duly summoned so to appear), we do, therefore, hereby order that the said E. B., pay weekly to said superintendent (or to said overseer), the sum of , for the support of said child [if necessary, insert here, unless the said E. B., shall nurse and take care of said child herself].

Given under our hands, at , this day of , 18 .

G. H., }
S. T., } Justices of the Peace.

No. 293.

§ 858. Undertaking to be Given by Mother of Bastard to Appear at Court of Sessions.

STATE OF NEW YORK, }
COUNTY OF . } ss.

Whereas, by an order heretofore, on the day of , 18 , duly made by and , justices of the peace of the county of , , the mother of a bastard child, now a charge upon the town of, in said county of (or against said county of) , was adjudged to pay the superintendents (or overseers) of the poor of said county (or town) of , the weekly sum of dollars for the support of said child, unless she should herself support the same, so that it should not be or become a public charge;

And whereas, though such order has been duly served upon her, she has not complied therewith;

Now, therefore, we, , of the of , in said county, by occupation, a , and , of the of , in said county, by occupation, a do hereby, jointly and severally undertake to pay to the people of the state of New York, the sum of dollars, for the payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents:

The condition of this obligation is such that, of the said shall personally appear at the next court of sessions of the county of , to answer the matters stated in the above mentioned order, and obey its order thereon, then this undertaking to be void; otherwise to remain in full force and effect.

Dated at , this day of , 18 .

In presence of

,

,

.

Add acknowledgment and justification clauses as in forms Nos. 107, 108.

No. 294.

§ 858. Warrant to Commit Mother for not Executing Bond.

County of , ss.

To any peace officer of said county, greeting:

Whereas, by an order, duly made by us, the undersigned, justices of the peace of said county, bearing date the day of , instant, in relation to the keeping of a certain bastard child lately born in said county, of the body of E. B., which is charge-

able to the town of , [or, said county], we directed, etc. [as in the order], which order was so made upon the application of E. F., overseer of the poor of said town [or, a superintendent of the poor of said county], and after due notice to the said E. B., to show cause, if any she might have, against the making of such order; and, whereas, a copy of said order, subscribed by us, has been served upon the said E. B., and she has neither executed the bond by law required for her appearance at the next court of sessions, etc., nor complied with the requirements of said order. You are, therefore, hereby commanded, in the name of the people of the state of New York, to take the said E. B., and convey her to the common jail of said county, there to remain, without bail, until she shall comply with said order, or execute the bond authorized by statute as aforesaid.

Given under our hands, at this day of , 18 .

G. H., S. T., } Justices.

No. 295.

§ 859. Notice to be given to Superintendent or Overseer for Reducing Amount in Order of Filiation.

To L. M., superintendent [or overseer of the poor]:

You are hereby notified that I shall make application to the next court of sessions of the county of , to be holden at , in said county, on the day of , 18 , at ten o'clock in the forenoon, to reduce amount directed to be paid by the order of filiation, of which the annexed is a copy, for the support of a bastard child therein named; which said application will be founded on the affidavits, copies of which are also annexed.

Dated at , this day of , 18 .

C. D.

No. 296.

§ 859. Notice by Superintendent or Overseer, that Application will be made to the Court of Sessions to Increase the Amount Payable in the Order of Filiation.

To C. D.: You will take notice, that I shall make application to the next court of sessions of the county of , to be holden at , in said county, on the day of , at ten o'clock in the forenoon, to increase the sum directed to be paid by the order of filiation, of which the annexed is a copy, for the

support of the bastard child therein named; which said application will be founded on the affidavits, copies of which are also annexed.

Dated at , this day of , 18 .

L. M.,
Superintendent of the Poor.

No. 297.

§ 859. Order Reducing Sum to be Paid by Father or Mother.

County of , ss.

To the overseer of the poor of the town of in said county, [or, the superintendent of the poor of said county]:

Whereas, by an order of filiation by us made, bearing date on day of last, we did determine that C. D. is the father of a certain bastard child, then lately born in aforesaid, and did therein order, among other things, that the said C. D. should pay to you, the said overseer [or superintendent], for the support of said child, the weekly sum of one dollar, so long as said child should continue chargeable to said town [or county]. And, whereas, upon the application of the said C. D., we have this day inquired into the circumstances of the case, and heard the proofs and allegations to us submitted in relation thereto; and it appearing to us, upon such inquiry, that the circumstances in relation to said bastard child render it proper and expedient that the sum required to be paid by the said C. D., by our former order, should be reduced, as hereinafter expressed. And, inasmuch as you, the said overseer [or superintendent], have shown before us no sufficient reason against such reduction, although appearing before us [or notified to appear before us and show cause, if any you might have], we do, therefore, reduce the sum required to be paid by the said C. D., by our former order as aforesaid, to the weekly sum of .

Given under our hands, this day of , 18 .

G. H.,
S. T., } Justices.

No. 298.

§ 860. Warrant to Seize the Property of Absconding Father or Mother.

County of , ss.

To the overseer of the poor of the town of , in said county [or, to the superintendent of the poor of said county]:

It appearing to us, two of the justices of the peace of said county, as well by the representation and application to us made by the said overseer [or the said superintendent], as upon due proof of the facts

before us given, that C. D. is the father of a bastard child whereof E. B., of said town, is now pregnant, and which, when born, is likely to become chargeable to said town [or county, or that C. D. is the father of a bastard child lately born in said town, of E. B., and which is chargeable or likely to become chargeable to said town or county], and that said C. D. has absconded from said town, which is the place of his ordinary residence, leaving in the said county some estate, real or personal:

We, therefore, authorize you, the said overseer of the poor, to take and seize the goods, chattels, effects, things in action, and the lands and tenements of said C. D., wherever the same may be found in said county; and you will, immediately upon such seizure, make an inventory of the property by you taken, and return the same, together with your proceedings, to the next court of sessions of said county.

Given under our hands in the town of , this day of . 18 .

G. H., } Justices.
S. T., }

No. 299.

§ 892. Notice of Appeal from Order of Filiation.

County of , ss.

To G. H. and S. T., Esqs., justices of the peace of said county:

You will take notice that the undersigned, conceiving himself aggrieved by the order made by you, of which a copy is annexed, hereby appeals therefrom to the next court of sessions to be holden in said county.

Dated at , this day of 18 .

C. D.

No. 300.

Subpœna on Appeal in Bastard Cases.

STATE OF NEW YORK, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To :

You and each of you are hereby commanded to appear personally before the court of sessions in and for the county of , at the , in the of , N. Y., on the day of , 18 , at o'clock in the noon, to testify the truth according to your

knowledge, in a certain appeal, then and there to be heard, from an order of filiation in a bastardy case, heretofore made by and , two of the justices of the peace of said county. Hereof fail not under the penalty of fifty dollars.

Witness, , county judge, this day of , 18 .

,
Clerk.

No. 301.

§ 866. Warrant for Discharge of Putative Father after Commitment.

STATE OF NEW YORK, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To the keeper of the common jail of the county of , greeting:

Whereas, was, on the day of , 18 , duly committed to your custody on a warrant issued by us for disobeying an order of filiation, whereby he was adjudged to be the putative father of a bastard child, of which was then supposed to be pregnant;

And whereas, it now appears that the said was in fact not pregnant (or was married before delivery, or the child was not born alive);

Now, therefore, you are hereby commanded to discharge the said from custody, unless he is there lawfully detained on some other warrant.

Dated at , this day of , 18 .

,
Justices of the Peace.

No. 302.

§ 887, Subd. 1. Complaint against Vagrant.

COURT, }
COUNTY OF . } ss.

, of the said of , being duly sworn, makes complaint and says, that , who is now in said of , is a person who*, not having visible means to maintain himself, lives without employment, in that he .

Subscribed and sworn to before me, }
this day of , 18 . }

No. 303.

§ 887, Subd. 2.

(Follow last form down to *, and then proceed.)
being an habitual drunkard, abandons, neglects and refuses to aid in the support of his family, in that he, etc.,

Jurat.

These forms may be adapted to complaints under the subsequent subdivision of this section.

No. 304.

§ 887, Subd. 1. Warrant for Vagrancy.

COURT, COUNTY OF . } ss.

In the name of the people of the state of New York:
To any peace officer in the county of :

Whereas, complaint has this day been made by , of the of , in the county of , on oath, before , a justice of the said , that on the day of , 18 , at the said of , in said county, , was and is a person who not having visible means to maintain himself, lives without employment against the peace of the people of the state of New York and the form of the statute in such case provided;

We therefore command you forthwith to take the body of the said , and bring him before the said , at the , in the said of , for examination with this warrant, and a return of your doings thereon endorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 18 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named , and now have him before the magistrate by whom this warrant was issued.

Dated , , 18 .

, Policeman.

No. 305.

§ 888. Information as to Truant Child.

COURT, COUNTY OF . } ss.

, being duly sworn deposes and says, that he is a in the aforesaid, that on the day of , 18 , one

a child, between the age of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, was found by him wandering in street of said of , a truant without any lawful occupation.

Subscribed and sworn to before me, this day of , 18 .
(Magistrate.)

[*Signature.*]

No. 306.

§ 888. Summons to Parent, etc., to Attend Examination of Truant Child.

COURT, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To , parent, guardian or master of

Whereas, complaint and information on oath has been duly made by , of the , in the county of , before me, , a justice of the that on the day of , 18 , said who is a child between the age of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, was found wandering in the streets of the of aforesaid, a truant without any lawful occupation, and said has been duly arrested and is now in custody on said charge. and is to be examined thereon before the said , at the , in the of , on the day of , 18 . You are hereby summoned and required to attend said examination at the time and place aforesaid.

Witness the said , at the of , the day of 18 .

[*Signature.*]

Endorse return.

No. 307.

§ 888. Undertaking of Parent, Master or Guardian of Truant Child.

COURT, }
COUNTY OF . } ss.

Whereas, complaint having been duly made before a justice of the , in the county of and state of New York, that residing in in the of in the county of and state of New York, a child of the age of years having sufficient bodily health and mental capacity to attend the public schools, was on the day of , 18 , found wandering in the streets of the said

of , a truant, without any lawful occupation. And, whereas, the said justice, on such complaint being made, did duly cause a peace officer to bring such child before him for examination, and did duly cause the parent, guardian or master of such child to be summoned to attend such examination. And, whereas, such examination was, on the day of , 18 , duly had before said justice, and said complaint satisfactorily established. And, whereas, on the establishment of said complaint, said justice did require the said parent, guardian or master of said child to enter into an engagement, in writing, with suret in the sum of hundred dollars, to the of that he will restrain such child from so wandering about as aforesaid; will keep h in h own premises, or in some lawful occupation, and will cause h to be sent to some school at least four months in each year until he becomes fourteen years old.

Now, therefore, we, the said parent, guardian or master, residing in county of by occupation a and residing in county of by occupation a and residing in county of by occupation a sureties, hereby jointly and severally undertake that the said will restrain said child from wandering about the streets of said of , a truant, without lawful occupation; will keep h in h own premises or in some lawful occupation, and will cause h to be sent to some school at least four months in each year until he becomes fourteen years old; or if he fail to perform either of those conditions, we, the said sureties, will pay to the of the sum of hundred dollars.

Dated at day of 18 .

[Add acknowledgment and justification.]

No. 306.

§ 888. Engagement of Parent, Master or Guardian of Truant Child.

COURT, }
OF , COUNTY OF }

THE PEOPLE
vs.

Whereas, the above named , residing in the county of and state of New York, a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, was, on the day of , 18 , found wandering in the streets and lanes of of , a truant, without any lawful occupation.

And, whereas, complaint was duly made to , a justice of the of , against said child, therefor.

And, whereas, said justice did cause a peace officer to bring such child before him for examination on said complaint, and did cause , the parent, guardian or master of said child to be summoned to attend such examination.

And, whereas, on such examination the said complaint was satisfactorily established, and the said justice did require the said parent, guardian or master of said child to enter into an engagement, in writing to the of , that he will restrain said child from so wandering about as aforesaid; will keep h in h own premises or in some lawful occupation, and will cause h to be sent to some school at least four months in each year, until he becomes fourteen years old.

Now, this agreement and engagement witnesseth: That the said , the parent, guardian or master of said child, hereby covenants, promises and agrees to and with the said of , that he will restrain said child from so wandering about as aforesaid; and will keep h in his own premises and in some lawful occupation, and will cause h to be sent to some school at least four months in each year, until he becomes fourteen years old.

In witness whereof, I have hereunto set my hand and seal this day of , 18 .

Sealed and delivered in presence of .

[L. S.]
[*Signature.*]

No. 309.

§ 888. Warrant of Arrest of Truant Child.

COURT, }
COUNTY OF . } ss.

In the name of the people of the state of New York:
To any peace officer of the county of , greeting:

Whereas, information on oath has this day been duly made by of the in the county of , before me , a justice of the said , that on the day of , 18 , at , in said county, one a child between the age of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, was found wandering in the of the of aforesaid, a truant, without any lawful occupation.

You are, therefore, commanded and required, forthwith to apprehend and take the body of the said and bring him before the said , at in the said with this warrant and a return of your doings thereon indorsed, for examination, and to answer the

said complaint, and to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the , in the county aforesaid, the day of 18 .

[*Signature.*]

No. 310.

§ 888. Warrant to Commit Truant Child Having Parent, Guardian or Master. Plea, Not Guilty.

COURT, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the almshouse of the said county, greeting:

Whereas, on the day of , 18 , was brought before me, , a justice of the peace in and for the and county of , charged on the oath of , which oath was believed by me, the said justice, with being a vagrant, within the intent and meaning of the statute and subdivision 8 of section 887 of the Code of Criminal Procedure, in that he is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, and was, on the day of , 18 , found wandering in the streets in said of , a truant, without any lawful occupation.

And, whereas, said on being brought before said justice, was immediately informed by said justice of said charge against h and of h right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had.

And, whereas, the parent, guardian or master of said was duly summoned to attend the examination of said on said charge.

And, whereas, the said charge was then and there distinctly read and stated to the said who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And, whereas, the said testimony was given and evidence was had in the presence and hearing of the said and said parent, guardian or master, he the said having previously thereto been allowed a reasonable time to send for and advise with counsel.

And, whereupon, the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that he said is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, was on the day of , 18 , found wandering in the streets of said of , a truant, without any lawful occupation.

And, whereas, after the said complaint was satisfactorily established, the said justice did require the said parent, guardian or master to enter into an engagement in writing to the of , that he would restrain said child from so wandering about; would keep h in h own premises or in some lawful occupation, and would cause h to be sent to some school at least four months in each year until h becomes fourteen years old; and the said parent, guardian or master, having refused or neglected within a reasonable time so to do, it was adjudged and determined by me that the said should be committed to the almshouse of said county, there being no other place provided for h reception.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said almshouse. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said almshouse, and there safely keep h until he shall be discharged according to law.

Given under my hand, at the of aforesaid, this day of 18 . }

[*Signature.*]

No. 311.

§ 888. Warrant to Commit a Truant Child, having Parents, Guardian or Master. Plea of Guilty.

COURT, }
COUNTY OF , } ss.

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the alms-house of the said county, greeting:

Whereas, on the day of , 18 , was brought before me, , a justice of the peace in and for the ; and

county of , charged on the oath of , which oath was believed by me, with being a vagrant within the intent and meaning of the statute and subdivision eight of section 887 of the Code of Criminal Procedure, in that he is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, and was on the day of , 18 , found wandering in the streets in said of , a truant without any lawful occupation.

And, whereas, the said on being brought before said justice, was immediately informed by said justice of said charge against h and of h right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had.

And, whereas, , the parent, guardian or master of said child was duly summoned to attend the examination of said child on said charge.

And, whereas, the said charge was then and there distinctly read and stated to the said and h the said having been given a reasonable time to send for and advise with counsel, did hen and there plead guilty to the said charge in the presence of and before said justice, and of h said parent, guardian or master.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that he the said is a child of the age of years having sufficient bodily health and mental capacity to attend the public shools, was, on the day of , 18 , found wandering in the streets in said of a truant without any lawful occupation.

And, whereas, after the said complaint was satisfactorily established, the said justice did require the said parent, guardian or master to enter into an engagement in writing to the of , that he would restrain said child from so wandering about; would keep h in his own premises or in some lawful occupation and would cause h to be sent to some school at least four months in each year, until he becomes fourteen years old. And the said parent, guardian or master having refused or neglected within a reasonable time so to do, it was adjudged and determined by me that the said should be committed to the almshouse of said county, there being no other place provided for h reception.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said almshouse. And, you, the said superintendent and principal keeper, are hereby commanded to receive the said

into your custody in the said alms-house, and there safely keep until he shall be discharged according to law.

Given under my hand, at the of } aforesaid, this day of , 18 . }

[*Signature.*]

No. 312.

§ 888. Warrant to Commit Truant Child, having no Parent, Guardian or Master. Plea of Guilty.

COURT, } ss.
COUNTY OF , }

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the almshouse of the said county, greeting:

Whereas, on the day of , 18 , was brought before me, , a justice of the peace in and for the and county of , , charged on the oath of , which oath was believed by be, with being a vagrant, within the intent and meaning of the statute, and subdivision 8 of section 887 of the Code of Criminal Procedure, in that he is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, and was, on the day of , 18 , found wandering in the streets in said of , a truant, without any lawful occupation.

And, whereas, said has no parent, guardian or master, or no parent, guardian or master can be found.

And, whereas, said , on being brought before said justice, was immediately informed by the said justice of said charge against h and of h right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had.

And, whereas, the said charge was then and there distinctly read and stated to the said , and he, the said , having been given a reasonable time to send for and advise with counsel, did then and there plead guilty to the said charge.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that he, the said , is a child of the age of years, having sufficient bodily health and mental capacity to attend the public schools, was, on the day of , 18 , found wandering in the streets in said of , a truant, without any lawful occupation. It was adjudged and determined by said justice that the said should be com-

mitted to the almshouse of said county, there being no other place provided for h reception.

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said almshouse. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said almshouse, and there safely keep until he shall be discharged according to law.

Given under my hand at the of aforesaid, this day of , 18 .

[*Signature.*]

No. 313.

§ 891. Certificate of Conviction of Vagrant.

I certify that A. B. having been brought before me, charged with being a vagrant, I have duly examined the charge, and that upon his own confession in my presence [or "upon the testimony of C. D.," etc., naming the witnesses], by which it appears that he is a person [pursuing the discription contained in the subdivision of section 887, which is appropriate to the case], I have adjudged that he is a vagrant.

Dated at the town [or city] of , the day of , 18 .

E. F.,
Justice of the Peace, of the town of
[Or as the case may be.]

No. 314.

§ 892. Warrant to Commit a Vagrant After Trial.
Plea, Not Guilty.

COURT, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To any sheriff, constable, marshal, or policeman in the county of , and to the superintendent and principal keeper of the almshouse and penitentiary of the said county, greeting:

Whereas, on the day of , 18 , was brought before me , a justice of the peace in and for the and county of charged on the oath of , which oath was believed by me, the said justice, with, on this present day, at the of , and being a vagrant within the intent and meaning of the statute.

And whereas the said justice, immediately and before any further

proceedings were had, informed the said of the charge against him and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And whereas the said testimony was given and evidence was had in the prsence and hearing of the said , he the said , having previously thereto been allowed a reasonable time to send for and advise with counsel.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that the said , on this present day, at the of aforesaid, was and is a vagrant within the intent and meaning of the statute; and it was adjudged and determined by me that the said , who is not a notorious offender, should be committed to the almshouse of the said county of , or being a notorious offender and improper person to be sent to the almshouse, should be committed to and confined in the alms house or penitentiary of said county for the term of , at hard labor.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house or . And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said alms-house or , for the term of at hard labor, and there safely keep until the expiration of the said .

Given under my hand, at the of aforesaid, this day of 18 .

[*Signature.*]

No. 315.

§ 892. Warrant to Commit a Vagrant. Plea of Guilty.

COURT, }
COUNTY OF } ss.

In the name of the people of the state of New York:

To any sheriff, constable, marshal or policeman of the county of , and to the superintendent and principal keeper of the alms-house or of the said county, greeting:

Whereas, on the day of , 18 , was brought before me, a justice of the peace in and for the and county of

, , charged on the oath of which oath was believed by me, the said justice, with, on this present day, at the of , and being a vagrant within the intent and meaning of the statute.

And, whereas, the said justice immediately and before any further proceeedings were had informed the said of the charge against h and of h right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said and he, the said was given a reasonable time to send for and advise with counsel; and whereas, he, the said did then and there plead guilty to the said charge, and in the presence of the said court, by said plea of guilty, did voluntarily admit and confess that he, the said was and is a vagrant within the intent and meaning of the statute.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a vagrant, in that the said was on this present day, at the of aforesaid, was and is a vagrant within the intent and meaning of the statute; and it was adjudged and determined by me that the said who is not a notorious offender, should be committed to the alms-house of said county of , or being a notorious offender and improper person to be sent to the alms-house, should be committed to and confined in the alms-house or of said county for the term of at hard labor.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said alms-house or And you, the said superintendent and principal keeper, or are hereby commanded to receive the said into your custody, in the said alms-house or for the term of at hard labor, and there safely keep until the expiration of the said

Given under my hand, at the of aforesaid, this day of 18 .

[*Signature.*]

No. 316.

§ 898. Information Against Child Begging, etc.

county of , ss.

, being duly sworn, deposes and says: That he resides in ; that on the day of , 18 , one

, a child of the age of years, was found begging for alms and soliciting charity from door to door in the said of , and was found begging for alms and soliciting charity in a street, highway and public place in said , to wit: in that he

Taken, subscribed and sworn to before me this day of , 18 .

No. 317.

§ 893. Warrant Against a Child Begging, etc.

COURT, } ss.
COUNTY OF , }

In the name of the people of the state of New York:
To any peace officer of the county of .

Whereas, complaint has this day been made by of the of , in the county of , on oath, before a justice of the said , that on the day of 18 , at the of , in said county, one a child of the age of years, was found begging for alms and soliciting charity from door to door, and was found begging for alms and soliciting charity in a street, highway and public place in said to wit: against the peace of the people of the state of New York and the form of the statute in such case provided;

We therefore command you forthwith to take the body of the said and bring h before the said , at the , in the said of , with this warrant, and a return of your doings thereon indorsed, to be dealt with according to law. Hereof fail not at your peril.

Witness the said at the of in the county aforesaid, the day of 18 .

[*Signature.*]

No. 318.

§ 893. Warrant to Commit a Child Found Begging. Plea, Not Guilty.

COURT, } ss.
COUNTY OF , }

In the name of the people of the state of New York:
To any sheriff, constable, marshal or policeman in the county of , and to the superintendent and principal keeper of the almshouse of the said county, greeting:

Whereas, on the day of , 18 , was brought before me, , a justice of the peace in and for the and county of ,

, charged on the oath of , which oath was believed by me, the said justice, with being a child of the age of years, who was, on the day of , 18 , found begging for alms and soliciting charity from door to door in said of and who was on the same day found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And, whereas, the said justice, immediately and before any further proceedings were had, informed the said of the charge against him and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , who then and there pleaded not guilty thereto, who was then and there tried upon the said charge by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person.

And, whereas, the said testimony was given and evidence was had in the presence and hearing of the said , he , the said , having previously thereto been allowed a reasonable time to send for and advise with counsel.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the charge aforesaid, to wit, of being a child of the age of years, who was, on the day of , 18 , found begging for alms and soliciting charity from door to door in said of , and who was, on the same day, found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And it was adjudged and determined by me that the said should be committed to the almshouse of the said county of , to be kept employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Now, therefore, you, the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of the said almshouse. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said almshouse, and keep h employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Given under my hand at the of aforesaid, this day of , 18 .

[*Signature.*]

No. 319.

§ 896. Warrant to Commit a Child Found Begging. Plea, Guilty.

COURT, }
COUNTY OF } ss:

In the name of the people of the state of New York:
To any sheriff, constable, marshal or policeman in the county of and to the superintendent and principal keeper of the almshouse of the said county, greeting:

Whereas, on the day of , 18 , was brought before me, a justice of the peace in and for the and county of , , charged on the oath of , which oath was believed by me, the said justice, with being a child of the age of years, who was on the day of 18 , found begging for alms and soliciting charity from door to door in said of , and who was on the same day found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:

And, whereas, the said justice immediately and before any further proceedings were had, informed the said of the charge against h and of h right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read and stated to the said , and he, the said was given a reasonable time to send for and advise with counsel; And, whereas, he, the said did then and there plead guilty to the said charge, and in the presence of the said court.

And whereupon the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon convicted of the offense aforesaid, to wit, of being a child of the age of years, who was on the day of , 18 , found begging for alms and soliciting charity from door to door in said of , and who was on the same day found begging for alms and soliciting charity in a street, highway and public place in said city, to wit:
And it was adjudged and determined by me that the said should be committed to the almshouse of said county of to be kept employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Now, therefore, you the said sheriff, constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the said superintendent and principal keeper of

the said alms-house. And you, the said superintendent and principal keeper, are hereby commanded to receive the said into your custody, in the said almshouse and keep h employed and instructed in useful labor until discharged by the county superintendent of the poor, or bound out as an apprentice by him as prescribed by special statutes.

Given under my hand, at the of aforesaid, this day of , 18 .

[*Signature.*]

No. 320.

§ 899, Subd. 1. Affidavit for Disorderly Person

COURT, }
COUNTY OF . } ss.

, of in the said of , being duly sworn, says, that she is the wife of , of said , that she complains of her said husband of being a disorderly person, according to section 899 of the Code of Criminal Procedure, for that he has actually abandoned his wife and children without adequate support, and has left them in danger of becoming a burden upon the public, and he neglects to provide for them according to his means. Deponent further says that for several days last past he has actually abandoned his family without adequate support, and left them in danger of becoming a burden upon the public, and that such family is not possessed of property or of the means of obtaining a livelihood without the aid of such husband.

Taken and sworn to this day of , 18 , before me, }

[*Signature.*]

No. 321.

§ 899, Subd. 1. Warrant for Disorderly Person.

COURT, }
COUNTY OF , } ss.

In the name of the people of the state of New York.

To any peace officer in the county of :

Whereas, complaint, on oath, has this day been duly made by of the of in the county of , before me, , a justice of the said of , that on the day of , 18 , at the of in said county, and for several days last past, one was and is a disorderly person, for that he has actually abandoned his wife and children without adequate support, and has

left his wife and children in danger of becoming a burden upon the public; and has neglected to provide for his wife and children according to his means, against the peace of the people of the state of New York and the form of the statute in such case provided.

We, therefore, command you forthwith to apprehend and take the body of the said and bring him before the said , at the in the said of , for examination, with this warrant and a return of your doings thereon indorsed, to answer the said complaint, and to be dealt with according to law. Hereof fail not at your peril.

Witness, the said , at the of , in the county aforesaid, the day of , 18 .

[*Signature.*]

By virtue of the within warrant, I have arrested the within named and now have him before the magistrate by whom this warrant was issued.

Dated , 18 .

No. 322.

§ 899, Subd. 3.

STATE OF NEW YORK, }
COUNTY OF } ss.

, being duly sworn, says that he resides in the of , in said county, and that is a disorderly person residing in said county, for the reason that he* pretends to tell fortunes (or where lost and stolen goods may be found), to the end that he may extort money, in that, etc. (here describe the manner of operation, etc.).

Jurat.

No. 323.

§ 899, Subd. 2.

(Follow last form down to *, and then proceed as follows:)

threatens to run away and leave his wife and children a burden upon the public, and that such family is not possessed of property or of the means of obtaining a livelihood without the aid of such husband.

Jurat.

No. 324.

§ 899, Subd. 4.

(Follow form No. 322 down to *, and then proceed.)

keeps a bawdy house therein, or a house for the resort of prostitutes, drunkards, tipplers, gamesters, habitual criminals, or other

disorderly persons, in the town of in said county, in that, etc. (here state the facts and circumstances showing the nature of the place or the character of the persons resorting thereto.)

Jurat.

The above forms may be adapted to the subsequent subdivisions of this section.

No. 325.

§ 899. Recognizance.

JUSTICES' COURT.

STATE OF NEW YORK, } ss.
COUNTY OF

Whereas, on the day of , 18 , did make complaint on oath before , one of the justices of the peace of the town of , in said county, against , in which complaint it was alleged that the said ;

And, whereas, the said justice caused the said to be brought before him and examined touching the offense in said complaint alleged, and it appeared to the said justice, upon such examination, by the confession of aid , and by competent testimony, that he was guilty of the offense in said complaint alleged, and was and is a disorderly person;

And, whereas, the said justice did, for the reasons set forth in said complaint, thereupon require the said to enter into a recognizance with surety , approved by the said justice, in the sum of dollars *, that he will support his wife and children, and will indemnify the against their becoming, within one year, chargeable upon the public;

Now, therefore, we, of the in said county, by occupation a , and of the , in said county, by occupation a . hereby jointly and severally undertake to pay to the people of the state of New York the sum of dollars, upon the following conditions;

The condition of this obligation is such that, if the said will support his wife and children, and will indemnify the against their becoming, within one year, chargeable upon the public, then this recognizance shall be void; otherwise to remain in full force and effect.

In witness whereof, we have hereto set our hands and seals, this day of 18 .

Acknowledgment and justification clauses, and approval of justice.

The above form can be readily adapted to other similar cases under section 899.

No. 326.

§ 899, Subds. 3, 9. Recognizance for Good Behavior.

(Follow last form down to *, and then proceed).

for the good behavior of the said for the space of one year.*

Now, therefore, we, of the , in said county, by occupation a , and of the , in said county, by occupation a , hereby jointly and severally undertake to pay to the people of the state of New York the sum of dollars, upon the following conditions.

The condition of this obligation is such that, if the said will be of good behavior for the space of one year next ensuing the date hereof, and not be guilty of the acts set forth in said complaint, then this recognizance shall be void; otherwise to remain in full force and effect.

In witness whereof, we have hereto set our hands and seals, this day of 18 .

Add acknowledgment and justification clauses, and approval of justice.

No. 327.

§ 899. Recognizance for Good Behavior after Commitment.

(Follow last form down to *, and then proceed).

And, whereas, the said , having failed to give the said undertaking, was, by the said justice, convicted on the day of 18 , of being a disorderly person as charged in the complaint, and a record of said conviction was duly made by the said justice, signed by him with the name of his office, and filed in the office of the county of ;

And, whereas, the said was, by a warrant signed by the said justice, with his name of office, duly committed to the common jail of the county of , for the term of , at hard labor, or until he gives the said security required as aforesaid, and still remains in said common jail of said county,

And, whereas, an application has been made to and , two justices of the peace (or, to Hon. , county judge of the county of), to take such undertaking so as aforesaid required of and on behalf of ;

Now, therefore, we, , of the , in said county, by occupation, a , and , of the in said county, by occupation, a , do hereby jointly and severally undertake to pay to the people of the state of New York the sum of dollars, upon the following conditions:

The condition of this obligation is such that, if the said will be of good behavior for the space of one year from the time of said conviction, and shall not, during such time, be guilty of any of the acts of which he was so as aforesaid convicted as being a disorderly person, then this recognizance shall be void; otherwise to remain in full force and effect.

(Same as in last form).

No 328.

§ 902. Certificate of Conviction—Disorderly Person.

I certify that A. B., having been brought before me charged with being a disorderly person, I have duly examined the charge, and that upon his own confession in my presence [or "upon the testimony of C. D., etc., naming the witnesses], by which it appears that he is a [pursuing the description contained in the subdivision of section 899, which is appropriate to the case]. I have adjudged that he is a disorderly person.

Dated at the town [or city] of , the day of , 18 , ;

E. F.,
Justice of the Peace of the town of
[Or as the case may be.]

No. 329.

§ 903. Warrant to Commit a Disorderly Person Plea of Not Guilty.

JUSTICES' COURT—

STATE OF NEW YORK, }
COUNTY OF } ss.

In the name of the people of the state of New York:

To , greeting:

Whereas, on the day of 18 , was brought before me, a justice of the peace in and for the of and county aforesaid, charged upon the complaint, on oath, of , with having, on the day of , 18 , been a disorderly person, for that he

And, whereas, the said justice immediately, and before any further proceedings were had, informed the said of the charges against him and of his right to the aid of counsel in every stage of the proceedings, and the said charge was then and there distinctly read, and stated to the said , who then and there pleaded not guilty thereto, and was then and there tried upon the said charge

by the said justice, who did thereupon hear testimony on oath in support of said charge, and in defense thereof, and on behalf of said person;

And, whereas, the said testimony was given and evidence had in the presence and hearing of the said , after he had been allowed a reasonable time to send for, and advise with counsel;

And, whereas, the said justice did thereupon adjudge and determine that the said was guilty of the aforesaid charge, and the said was thereupon duly convicted of the offense aforesaid, to wit, of being a disorderly person, in that he did, at aforesaid, on the said day of , 18 , ;

And, whereas, prior to such conviction, the said was required to give security by written undertaking with suret , in the sum of dollars, that he would support his wife and children and would indemnify the against their becoming, within one year, chargeable upon the public;

And, whereas, the said , inasmuch as he did not give the undertaking required as aforesaid, was convicted of being a disorderly person as aforesaid by the said justice, who forthwith duly made up and signed, with his name of office, and immediately filed in the office of the county of , a record of such conviction;

Now, therefore, you, the said constable, marshal or policeman, are commanded forthwith to convey and deliver the said into the custody of the sheriff of the county of ; and you, the said sheriff, are hereby commanded to receive the said into your custody in the common jail of said county, and safely keep him in such common jail for the term of , at hard labor, or until he gives the said security as aforesaid.

Given under my hand, at the aforesaid, this day of , 18 .

Justice of the Peace.

The above form may be readily adapted to other cases arising under section 899.

No. 330.

§ 914. Application for Order.

COURT OF SESSIONS—County of .

In the Matter of
An Application by the Overseers of the Poor in Behalf of , a Poor Person.

To the court of sessions of the county of :

The petition of and , overseers of the poor of the county of , respectfully shows:

That one is a resident of the town of in the county of ; that he is a poor person, and is so old (or state some of the other grounds of inability specified in section 914) as to be unable, by work, to maintain himself; that one is a son of the said and a resident of the said town; that he is of sufficient ability to relieve or maintain his said father, but has neglected and refused, and still neglects and refuses, so to do, or to contribute thereto;

Your petitioners, therefore, pray that an order may be granted, directing the said to provide for the relief of and maintenance of his said father, , and for such other and further order or relief in the premises as may be just and proper.

Dated this day of 18 .

STATE OF NEW YORK, }
COUNTY OF . } ss.

and , the foregoing petitioners, being severally duly sworn, does each for himself say that he has read the foregoing petition by him subscribed, and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes to be true.

Jurat.

No. 331.

§ 915. Notice to Person to Support Relative.

Sir: Please to take notice that, upon the petition of , a copy of which is hereto annexed, the undersigned, overseers of the poor of the town of , will apply to the court of sessions of the county of , at the , in the of , on the day of , 18 , at the opening of court, or as soon thereafter as the application can be heard, for an order of said court compelling you to relieve and maintain one , and for such other relief as may be just.

Dated at , this day of , 18 .

To .

Overseers, etc.

No. 332.

§ 916. Order Compelling Relative to Maintain Poor Person.

At a term of the court of sessions of the county of , held in and for the county of , at the , in the of , on the day of , 18 .

Present: Hon. , County Judge.

COURT OF SESSIONS—COUNTY OF .

IN THE MATTER OF
THE APPLICATION OF, ETC., IN BEHALF OF, ETC. }

On reading and filing the petition of and , overseers of the poor of the county of , and on proof of due service thereof on , and after hearing the proofs and allegations of the respective parties;

Ordered, that the said relieve and maintain the said at his own charge, and pay, to the overseers of the poor of the county of the sum of dollars for each and every week for the relief and maintenance of until the further order of the court.

And it is further ordered that he pay to said overseers the further sum of dollars, as and for their costs and expenses of this application.

No. 333.

§ 927. Complaint against Apprentice, etc.

STATE OF NEW YORK,
COUNTY OF . } ss.

, being duly sworn, says that he resides in the of , in said county; that is his apprentice [or servant], lawfully bound to service as prescribed by the special statutes in such cases made and provided [here state the facts showing such relation and annex a copy of the indenture or contract of service, if any]; that said willfully absents him from such service, without the leave of deponent [or refuses to serve according to duty, or is guilty of some misdemeanor or ill-behavior, which state].

Jurat.

No. 334

§ 928. Warrant for Arrest of Apprentice.

STATE OF NEW YORK,
COUNTY OF . } ss.

In the name of the people of the state of New York:

To any constable, etc., of the county of :

Whereas, complaint has been made this day to me, a justice of the peace of the town of , in said county, by against one that he, a lawfully bound apprentice to the said , has willfully absented himself from the service of the said without his leave [name one of the grounds specified in section 827];

You are hereby commanded to arrest the said and forthwith

bring him before me, at my office in the of , on the day of , 18 .

Dated at , this day of , 18 .

,
Justice of the Peace.

No 335.

§ 931. Complaint against Master.

STATE OF NEW YORK, }
COUNTY OF . } ss.

, being duly sworn, says that he resides in the of , in said county, and is the apprentice [or servant] of one , lawfully bound to him to service as prescribed by the special statutes in such cases made and provided; that the said is guilty of cruelty to deponent [or misusage, etc. One of the grounds enumerated in section 930. State the facts showing the truth of such charge.]

Jurat.

No. 336.

§ 931. Summons to Master.

STATE OF NEW YORK, }
COUNTY OF . } ss.

In the name of the people of the state of New York:

To :

Whereas, complaint has been made this day to me, a justice of the peace of the town of , in said county, by , against you, that you are guilty of cruelty to , who is your lawfully bound apprentice [name the ground shown in the complaint];

You are hereby summoned to appear before me, at my office in the of , in said county, on the day of , 18 , at o'clock in the noon of said day to answer the complaint made and filed in this matter.

Witness the said , at the of , in the county aforesaid, the day of , 18 .

,
Justice of the Peace.

No. 337.

§ 935. Undertaking for Appearance.

STATE OF NEW YORK, }
COUNTY OF . } ss.

Whereas, complaint has been duly made to , a justice of the peace of said county by that one is guilty of cruelty to , his lawfully bound apprentice under a contract whereby has received (or is entitled to receive) a sum o money with him as a compensation for his instruction;

And whereas, the said has been brought before the said justice on a warrant issued on such complaint, and such complaint can not be compromised;

Now, therefore, we, , of the of , in said county, by occupation a , and of the of , in said county, by occupation a , are held and firmly bound unto the people of the state of New York in the sum of dollars, for the payment of which sum we jointly and severally bind ourselves, our and each of our heirs, executors and administrators firmly by these presents.

The condition of this obligation is such that if the above bounden appear at the next court of sessions of the county of , and there render himself amenable to the orders and process of the court, then this undertaking to be void; otherwise to remain in full force and effect.

Dated at , this day of , 18 .

(Acknowledgment and justification clauses.)

,
,

No. 338.

§ 937. Form of Undertaking under Section 935 can readily be adapted to the Requirements of this Section.

No. 339.

§§ 941-949. Criminal Statistics.

The following are the instructions and forms as issued by the Secretary of State:

STATE OF NEW YORK,
OFFICE OF THE SECRETARY OF STATE,
ALBANY, *Nov.* 1, 1886.

The edition of the pamphlet of forms and instructions for the guidance of district attorneys, county clerks and sheriffs, heretofore in use, having become exhausted, it has been deemed necessary to reprint the same as now applicable and in force.

The act of 1867 (chapter 604) relating to the transmission to the office of the Secretary of State, by clerks of courts of record and sheriffs, of records of conviction and certain other statistical information required by law, having been substantially superseded by title X of part VI of the Code of Criminal Procedure, passed June 1, 1881, (chap. 442, Laws of 1881,) reference herein will be made to that enactment.

The Secretary of State takes this occasion also to say, that the legislature of this State has made no provision for the printing or distribution, by him, of blank forms for use of clerks and sheriffs. These officers, in making their monthly statements, are, therefore, respectfully referred to the forms and blanks herein set forth and suggested, as a guide to them in procuring the printing of such forms, if deemed desirable.

I am, very respectfully.
FREDERICK COOK,
Secretary of State.

No. 340.

FORMS AND INSTRUCTIONS.

UNDER CODE OF CRIMINAL PROCEDURE, TITLE X, PART VI, SECTIONS 941-949.

To District Attorneys:

It is not considered necessary to issue extended instructions or forms for the guidance of district attorneys, who are officers learned in the law — except to promote uniformity of returns from county clerks.

The duties of the district attorney arise under section 941 of title X, part VI of the Code of Criminal Procedure, and are not directly related to this office, but with the county clerk of his county. The county clerk is, however, greatly dependant upon the district attorney of his county, for such statements as will enable such county clerk to

promptly make an intelligent report to the Secretary of State as to convictions in criminal courts of record.

By section 941 of the Code of Criminal Procedure, the duty is imposed upon the district attorney of the county in which any criminal court of record is held, to furnish, within ten days after the adjournment of said court, to the clerk of such court, such a description of the offense committed by every person convicted of crime, abridged from the indictment, as will be sufficient to maintain the averments relating to such offense, or necessary to be made in an indictment for a second offense.

The object of the law is doubtless chiefly to furnish evidence which will be sufficient, on an indictment for a second offense, to prove the facts of a prior conviction.* A general statement that the defendant was convicted of, say robbery, or any other similar and general description of the offense, will not prove the facts necessary to be established on the trial of an indictment for a second or subsequent offense. Such an indictment must aver that the defendant, at a particular court, held at a particular time and place, before persons to be named, was convicted of a specific offense, to wit, of robbery, first (or second) degree, which must be stated with as much precision and certainty, as to time, place, manner, person on whom committed, and with all the legal requisites and particulars to constitute crime, as in the first indictment. Of course these averments must be sustained by proof; and the description furnished by the district attorney is the proof which the law intends should be adduced. This is done to promote public justice, to save trouble to district attorneys or their successors, in future years, and to avoid the large expense of procuring exemplifications of records of conviction.

These general remarks will, perhaps, be sufficient to guide district attorneys in preparing their statements. But as section 949 of the Code of Criminal Procedure requires the Secretary of State to publish forms and instructions for its execution, such forms and instructions will be herein presented. To furnish forms for all cases of criminal convictions would be a work of unnecessary labor and of no practical utility. All that can be done is to give general directions applicable to the great mass of cases, and a few instances of forms to exemplify the instructions.

Generally speaking, it will be more convenient, and more likely to insure accuracy, to recite the *charging part* of the indictment, omitting only the synonymous words which it sometimes contains. Thus, in a case of *perjury*, where the indictment necessarily contains spe-

* See, also, sections 8, 9 and 10 of article first, title 6, chapter 2, part 4 of the Revised Statutes.

cial averments, the statement of conviction may be in the following form:

John Jackson, having been indicted, for that, at a circuit of the supreme court, held at, etc., in and for the county of , on the day of 18 , a certain issue joined in the supreme court between Thomas Stiles, plaintiff, and Rebecca Stiles, defendant, in an action for divorce (or other civil action), came on to be tried before said circuit court, and a jury of the county then and there duly impaneled and sworn; and that the said John Jackson was then and there produced as a witness by and on behalf of the said Thomas Stiles, and was then and there duly sworn according to law, etc. (reciting the substantial part of the indictment); and having been duly tried by a jury, and found guilty of the offense of which he was so indicted, to wit: *perjury*; he is thereupon by the court here sentenced to imprisonment in the state prison at Auburn for years.

A similar form will be necessary in stating convictions for *duelling, incest, rape* and many other crimes, and particularly certain *misdemeanors* in which special averments are necessary to describe the offense.

There are some cases in which an abbreviated form may be adopted, of which the following are examples:

Murder, first degree.— John Jackson, having been duly tried by a jury and found guilty of murder in the first degree, for which he had been indicted, in feloniously killing Thomas Stiles, on the day of , at the town of , in the county of , by feloniously shooting the said Stiles with a pistol loaded with gunpowder and ball, he is sentenced, etc.

Arson in the first degree.— James Jackson, having been duly tried by a jury, and found guilty of arson in the first degree, for which he had been indicted, in willfully and feloniously burning in the night-time, on the day of , at the town of , in the county of , the dwelling-house of John Stiles, in which there was at the time a human being, to-wit: Nancy Stiles; he is sentenced to be imprisoned, etc.

Manslaughter.— James Williams, having been duly tried by a jury, and found guilty of manslaughter in the first degree (or whatever degree was found by the jury), for which he had been indicted, in killing John Doe on the day of , at the town of , in the county of , in the heat of passion, but in a cruel and unusual manner, by stabbing him with a dangerous weapon, to-wit: a knife, he is sentenced to imprisonment in the state prison at Sing Sing for years.

The various degrees of manslaughter depend so much on the circumstances of each case, that, as a general rule, the form of reciting the *charging part* of the indictment, as given before in the case of *perjury*, had better be adopted, as there will be much less liability to mistake.

Rape.— James Jackson, having been duly tried by a jury, and found guilty of rape, for which he had been indicted, in carnally and unlawfully knowing Julia Jones, a female child under the age of ten years, on the day of , at the town of , in the county of , he is sentenced to imprisonment in the state prison at Dannemora for years.

Assault in first degree.— James Thomas, having been duly tried by a jury, and found guilty of shooting a pistol loaded with gunpowder and ball at William Townsend, on the, etc., at the town, etc., with intent to kill the said Townsend for which he had been indicted, he is sentenced, etc.

Grand larceny, second degree.— John Jackson, having been duly tried by a jury and found guilty of having on the, etc., at the town, etc., feloniously taken and carried away one gold watch of the value of twenty-six dollars, the personal property of William Jones, for which offense he has been indicted, he is sentenced to inprisonment, etc.

When the conviction is founded on a plea of confession, the commencement of the form should vary from those before given, and should be stated thus:

John Jackson, having been indicted for grand larceny, second degree, in having on the , at the town of, etc., feloniously stolen, taken and carried away one gold watch of the value of twenty-six dollars, the personal property of William Jones, and on being arraigned upon the said indictment having confessed the said offense, and pleaded guilty to said indictment, he is sentenced, etc.

Where there are several counts in an indictment, intended to describe the same offense, the statement of the crime need not be repeated according to the formal variations in the different counts, but should be stated once only, according to the count which was proved on the trial.

The foregoing instructions are addressed more particularly to *district attorneys*, although the same will be useful to clerks of criminal courts, to enable them to prepare entries of judgments if that duty is neglected by the district attorney.

To County Clerks:

The following appear to be the only instructions necessary to be

given to *clerks of criminal courts.* (See § 942 and 943, Code of Criminal Procedure.)

They are specially requested to report promptly every case of neglect, by a district attorney, to furnish them with the statements required by the statute to be prepared by him.

Every judgment must be entered in the court minutes at the time of the sentence, or before the court adjourns, and the transcript must be sent within twenty days after the adjournment; and if the district attorney has omitted to prepare the statements of the offenses upon which convictions have been had, *the clerk must do it for his own protection,* and submit them to the court before entering them in the minutes.

A transcript may and should contain all the convictions had at the same term or session of the court. The following will be the form of the caption:

Transcript of the entries in the minutes of the court of oyer and terminer (or general sessions of the peace) held at the court-house in the town of , in and for the county of , on the day of , one thousand eight hundred and , by and before Hon. , justice of the supreme court (or Hon. , county judge of said county), and A. B. and C. D., Esquires, justices of the sessions of the county, of all convictions for criminal offenses had at the said court, and of the sentences thereon.

It is important that the title of the court and the names of the judges should be given in full.

The minutes of the judgment or conviction and of the sentence are then to be copied separately.

The minutes of the trial are not required by law to be furnished to the secretary of the state, and are of no official use to him, and the practice of some clerks of copying out those minutes containing the names of jurors and witnesses is altogether irregular and unnecessary.

After entering all the convictions and sentences, the following certificate should be added:

I, , clerk of the county of , do hereby certify that the foregoing is a true and correct transcript of all the convictions for criminal offenses had at the court of , held in and for the said county on the day of , 18 , as entered in the minutes of said court kept by me, as the clerk thereof, and of the sentences thereon.

In witness whereof, I have hereunto subscribed my name and affixed the seal of my office, at , the day of , 18 .

In the city and county of New York the clerks of the criminal courts will, of course, describe their official character, according to

the fact, and the clerks of certain city courts in Brooklyn and Buffalo will also use their official titles in this certificate.

Under section 943 of the Code of Criminal Procedure, it is also required of the clerk of the court to transmit, within twenty days, to the office o the secretary of state, statements of indictments tried, etc. These should be made under this caption:

Statement of the number of indictments tried at the court of oyer and terminer, held at the court-house in the town of , in and for the county of , on the day of , in the year one thousand eight hundred and , by and before Honorable , justice of the supreme court of the judicial district, and A. B. and C. D., justices of the sessions of the said county, and also the number of indictments pending in the said court against persons who were discharged during the session of the said court without trial.

The whole number of indictments tried at the said court was

Of which *one* was for murder, first degree, in which the defendant was found guilty (or was acquitted).

Three for grand larceny, first degree, in two of which the defendants were tried, and in one was found guilty (or was acquitted).

One for assault, first degree, in which the defendant was .

That the whole number in which convictions were had was , and the whole number in which the defendant was acquitted was .

That the whole number of indictments on which persons were discharged without trial during the session of the said court was .

Of which was for assault, second degree.

And were for grand larceny, second degree.

[Or, and that no person was discharged at the said court without trial.]

I, the clerk of the county of , and clerk of the court of oyer and terminer, held in and for the county of , on the day of , 188 , do hereby certify that the foregoing is a true and correct statement of the number of indictments tried at the said court, and of the number of indictments against persons who were discharged at the said court without trial.

In witness whereof, I have hereunto subscribed my name, and affixed the seal of my office, at , this day of , 188 .

This form will be varied according to the style and name of the court, whether of general sessions of the peace, oyer and terminer, recorder's court in certain cities named in Code of Criminal Procedure, or otherwise, and according to the official title of the clerk.

In case of convictions on plea of guilty the following form may be used:

[Caption as in case of foregoing statement.]

There were also two persons convicted at the said court upon their own confession and plea of guilty, one of whom was indicted for , and the other for

Convictions in Courts of Special Sessions.

By section 944 of the Code of Criminal Procedure, county clerks are required to transmit to the secretary of state *copies* of all certificates of convictions by any courts of special sessions filed with them

The following will be the form of such returns:

A return of copies of all certificates of convictions made by courts of special sessions in the county of , filed with the county clerk of the said county, since the transmission by him of any transcripts of criminal convictions

The certificates are then to be copied *verbatim*, to which the following certificate should be added:

I, , county clerk of the county of , do hereby certify that the foregoing are true and correct copies of all certificates of convictions made by any court of special sessions, and filed in my office within the period above specified

Given under my hand and seal of office at , this day of , 18 .

The reports of county clerks must be written in a plain hand, so tha' no mistakes may occur in the filing and recording thereof in the office of the secretary of state. Any material informality in said reports will compel the secretary of state to send the same back at the expense of the county clerks for amendment, and the penalty may be enforced as if the same never had been transmitted. Hereafter the statistical year as to criminal returns, will end on the 31st of October, so as to give the necessary time to the secretary of state to make up his annual report to the legislature.

The transcripts of convictions and the copies of certificates must be on separate sheets of paper, and should be enclosed in a strong envelope or wrapper, directed to the secretary of state, and sent by mail or by express at the expense of the county clerk. The fees of county clerks for all services in transmission of transcripts of conviction and reports upon statistics of crime to the secretary of state, are prescribed by the Revised Statutes of this State.

Local Police Magistrates.

It is respectfully suggested to county clerks, in order to secure prompt and full returns of convictions in courts of special sessions (not of record) before police justices, justices of the peace, etc., that

a circular letter sent by each county clerk, to each local magistrate in his county, before whom any convictions in special sessions may be had, in language and form somewhat as in the subjoined letter, may conduce to favorable results. It is also respectfully suggested, that county clerks inform justices of the peace, when administering to them the oath of office, or when meeting them at courts, or elsewhere, as to their duties under the Code of Criminal Procedure.

COUNTY CLERK'S OFFICE,
, 18 .

To ———, *Justice of Peace or* (*Police Justice*):

DEAR SIR.—The Code of Criminal Procedure requires the county clerk to report to the secretary of state on or before the fifth day in each month, all certificates of convictions made by any court of special sessions (such as your court) during the previous month.

Will you please make a monthly statement to the county clerk from time to time as to all such convictions, and in case there have been no convictions in your court, at any time during the preceding month, then please make and send me a statement to that effect, over your official signature.

As a guide in preparing certificates of convictions, I would also respectfully suggest that law stationers and law blank publishers at Albany, Rochester, New York city and elsewhere, publish blank forms which will aid materially in making up the proper form of certificates of convictions.

Yours, respectfully,
A. B.,
County Clerk.

N. B.—Justices of the peace, police justices, etc., in making certificates of conviction, will observe care in properly describing the offense as defined by the Code of Criminal Procedure now in force.

The following blank form of certificate of conviction in justices' courts, etc., is recommended for use of local magistrates in reporting convictions to county clerks, or in case the justice has no blank form, he may write out the same adapted to the case:

Certificate of Conviction—General.

COURT OF SPECIAL SESSIONS—COUNTY OF , TOWN OF

THE PEOPLE OF THE STATE OF NEW YORK
against
JOHN DOE.

18 .

The above-named John Doe, having been brought before John Johnson, Esq., a justice of the peace of the town of , and forming a court of special sessions, charged with . And

This duty, it will be seen, relates to convictions in certain minor city courts, courts of special sessions and police courts held in the various cities of the state. The report which should be transmitted to this office on the first day of every month, will be in tabular form, like the annexed, marked B. The form should be printed on ruled paper, the ruling directly opposite the printed matter on the left margin of the report, in order that a systematic report may be had from all the sheriffs alike.

(A.)

FORM OF REPORT CONCERNING PERSONS CONVICTED IN COURTS OF RECORD.

REPORT of the Sheriff of the county of to the Secretary of State of the State of New York, respecting the persons convicted of criminal offenses at the Court of , held in and for the said county, on the day of , 188 , made pursuant to the 946th section of the Code of Criminal Procedure.

NAME OF CONVICT.	Crime of which convicted.	Occupation.	Sex.	Age.	Social relations.
James Edwards alias Thomas Smith.	Grand larceny, first degree.	Laborer	Male	35	Married .....
Eliza Jones	Arson, second degree....	Tailoress.....	Female	20	Single .....

FORM OF REPORT—(*Continued*).

Place of birth.	Secular instruction.	Religious instruction.	Parents.	Former offense.	Habits of life.
Massachusetts...	Read and write.....	Had religious instruction	Father.	Grand larceny, 2 deg.	Intemperate.
New York State.	Can not read or write.	Never had religious instruction.	Mother.	None	Temperate.

Dated at . 18 .

Sheriff of the county of

(B.)

FORM OF REPORT CONCERNING PERSONS CONVICTED AT COURTS OF SPECIAL SESSIONS.

REPORT of the Sheriff of the county of to the Secretary of State, respecting the persons convicted of criminal offenses at the courts of Special Sessions, held in and for the city of for the month of 18 , *pursuant to section* 945, *Code of Criminal Procedure.*

[Write the offenses in this heading, classifying them in alphabetical order.	Assault, 3d degree.	Cruelty to animals.	Disorderly conduct.	Intoxication.	Malicious trespass.	Petit larceny first offense.	Selling lottery tickets.	Vagrancy.	Violating city ordinance.
Number reported									
Males									
Females									
Under 15 years of age									
From 15 to 21 years of age									
From 21 to 25 years of age									
From 25 to 30 years of age									
From 30 to 40 years of age									
From 40 to 50 years of age									
From 50 to 60 years of age									
Over 60 years of age									
Unknown age									
Married									
Married and having children									
Single									
Unknown									
Natives of United States									

Natives of Ireland								
Natives of Germany								
Natives of England								
Natives of Scotland								
Natives of France								
Natives of Canada								
Other foreign countries								
Unknown								
Can read and write								
Can read only								
Can not read or write								
Unknown								
Had religious instruction								
Never had instruction								
Unknown								
Parents living								
Father living								
Mother living								
Parents dead								
Unknown								
Before convicted								
Never before convicted								
Unknown								
Temperate								
Intemperate								
Unknown								

Dated at 18 .

Sheriff of the county of

No 341.

§ 945. Criminal Statistics.

COURT OF .}
COUNTY OF .}
THE PEOPLE
vs. } day of 18 .

Question — What is your name and occupation?

Answer —

Question — What is your age?

Answer —

Question — Where were you born?

Answer —

Question — Are you married or single?

Answer —

Question — What religious instruction have you received and in what religious denomination have you received it?

Answer —

Question — What education have you received?

Answer —

Question — Are your parents living or dead?

Answer —

Question — Are you temperate or intemperate?

Answer —

Question — Have you been before convicted, or not, of any crime; if you have, of what crime and where convicted?

Answer —

_____,
Sheriff of county.

This form is suggested for convenience of sheriffs and justices of peace, etc., in procuring information respecting convictions in courts of special sessions, and in eliciting the information indicated.

The Code of Criminal Procedure, in section 948, prescribes a penalty for neglect of duty upon the part of any county clerk, or sheriff, or magistrate, and the manner of enforcing the same, which the secretary of state sincerely hopes there may be no occasion to enforce. With an intelligent and prompt compliance on the part of the officials charged with the duty of making reports upon criminal convictions to the office of the secretary of state, whether in courts of record or special sessions, it is believed that a complete and valuable report upon criminal statistics, may be annually made from this office to the legislature.

Respectfully submitted.

FREDERICK COOK,
Secretary of State.

No. 342. Extradition.

DEPARTMENT OF STATE,
WASHINGTON, *July*, 1885.

INSTRUCTIONS IN RELATION TO APPLICATIONS FOR THE EXTRADITION OF FUGITIVE CRIMINALS.

First. When an extradition is sought for an offense of which the state courts have jurisdiction, the request must come from the governor of the state. When sought for an offense against the United States, the application should be made through the attorney-general, or the proper executive department. All requests for the institution of proceedings for extradition should be addressed to the secretary of state and forwarded to the department of state, accompanied by the necessary papers as herein stated, and furnishing the full name of the person proposed for designation by the president, to receive and convey the prisoner to the United States.

Second. The existing treaty provisions between the United States and foreign powers in reference to extradition, provide that the surrender shall only be made: Upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her commitment for trial if the crime had been there committed.

The evidence required to be used in the preliminary examination in the foreign state is as follows:

(1.) If the fugitive has been convicted and escaped thereafter, a transcript of the record of conviction and judgment duly certified under the seal of the court, with the personal certificate of the judge of the court as to its genuiness, and authenticated under the great seal of the state where the conviction was had or under the seal of the proper Federal court.

(2.) If no trial has been had and an indictment has been found, a copy of the indictment, with a copy of bench warrant, if any has issued, and the return thereto, certified and authenticated as above prescribed.

(3.) If no indictment has been found, but a prosecution has been instituted, and a warrant of arrest issued, a copy of the procedure in such case, together with a copy of all the evidence upon which such warrant of arrest issued (so far as such copy can be procured); and a copy of the warrant with any return that may have been made thereto; all of which should be certified by the magistrate or judicial officer who issued the warrant, and if a justice of the peace or officer having no seal, his official character should be properly certified, and the whole authenticated as above provided.

If the extradition of the fugitive is sought for several offenses, copies of the several convictions, indictments, or informations, certi-

fied and authenticated as hereinbefore directed, should be forwarded, and the request for extradition should name the several offenses.

All the papers herein enumerated should be transmitted in duplicate, one copy being required for the files of the department, and the other duly authenticated by the secretary of state, will be returned with the President's warrant for the use of the agent who may be designated to receive the fugitive.

Thirdly. By the practice of some of the countries with which the United States have treaties, to entitle copies of depositions to be received in evidence, the party producing them is required to attest under oath that they are true copies of the original depositions, and it is therefore desirable that such agent either from a comparison of the copies with the originals, or from having been present at the attestations of the copies, should be prepared to make such declaration. When the original depositions are forwarded such declaration is not required.

A strict compliance with these formal requirements may save to the parties seeking the extradition of the fugitive criminal much delay and expense.

MEMORANDUM RELATIVE TO THE EXTRADITION OF FUGITIVES FROM THE UNITED STATES IN BRITISH JURISDICTION.

In causing requisitions to be made on the British authorities under the treary of 9th of August, 1842, for the surrender of criminals fugitives from justice, it must be made to appear to the President of the United States—

1st. That one of the offenses enumerated in the treaty has been committed within the jurisdiction of the United States, or some one of the states or territories.

2d. That the person charged with the offense has sought an asylum or has been found within the British dominions.

Upon the presentation of evidence of these facts a requisition will be made requesting the delivery of the person charged, it being understood that such evidence of criminality be subsequently exhibited before the British authorities as, according to the laws of the place where the person charged shall be found, would justify his commitment for trial if the crime of which he is accused had there been committed. It is admissible as constituting such evidence to produce a properly certified copy of an indictment found against the fugitive by a grand jury, or of any information made before an examining magistrate, accompanied by one or more depositions setting forth as fully as possible the circumstances of the crime.

By the 14th section of the English extradition act of 1870, "depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence of proceedings under this act."

The 15th section of the same act provides as follows: "Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of, or judicial documents stating the facts of a conviction, shall be deemed duly authenticated for the purposes of this act if authenticated in manner provided for the time being by law, or authenticated as follows: (1) If the warrant purports to be signed by a judge, magistrate or officer of the foreign state where the same was issued; (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and (3) If the certificate of, or judicial documents stating the facts of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and if in every case the warrants, depositions, statements, copies, certificates, and judicial documents [as the case may be] are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state; and all courts of justice, justices and magistrates, shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

If the fugutive be charged with the violation of a law of a state or territory, his delivery will be required to be made to the authorities of such state or territory.

If the offense charged be a violation of a law of the United States (such as piracy, murder on board vessels of the United States, or in arsenals or dock-yards, etc.), the delivery will be required to be made to the officers or authorities of the United States.

The expense of the apprehension and delivery to be borne by the party applying for the requisition of the government, except in cases of crimes against the United States.

The name of the person who is to receive and bring back the offender is required for insertion in the warrant authorizing him to act.

A TREATY TO SETTLE AND DEFINE THE BOUNDARIES BETWEEN THE TERRITORIES OF THE UNITED STATES AND THE POSSESSIONS OF HER BRITANNIC MAJESTY IN NORTH AMERICA, FOR THE FINAL SUPPRESSION OF THE AFRICAN SLAVE TRADE; AND FOR THE GIVING UP OF CRIMINALS, FUGITIVE FROM JUSTICE, IN CERTAIN CASES.

Concluded 9th August, Ratified 22d August, Exchanged 13th October, Proclaimed 10th November, 1842.

* * * * * *

Whereas, it is found expedient for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties, respectively, that persons comitting the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up.

* * * * * *

ARTICLE X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found, within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

No. 343.

Restorations to Citizenship.

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
ALBANY, *October* 12, 1885.

Applications for restoration to citizenship may be made at such time after discharge from imprisonment as the executive shall deem reasonable, under the following regulations:

I. All applications must be presented by petition, which should be written in a distinct hand, subscribed and sworn to by the applicant.

II. Give full name and *alias* in Roman letters, for example, JOHN DOE.

III. The petition must give the following particulars of the conviction: 1. The place and county. 2. The crime. 3. The court. 4. Name of judge and district attorney, if known. 5. The date of sentence. 6. The day when received in prison. 7. The term. 8. The amount of deduction of sentence earned by good conduct. 9. The date of discharge. 10. The name of the prison or penitentiary. 11. Place of residence at time of conviction. 12. If convicted under an *alias*.

IV. The petition must state if any previous application has been made for restoration.

V. The certificate of prison officials upon discharge from prison, showing that the applicant earned deduction of sentence for good conduct, must be produced, or its absence satisfactorily explained.

VI. If the applicant has a family, the petition must so state.

VII. The petition must fully give the history and occupation of the applicant since his discharge from prison, to the date of the application.

VIII. The petition must be accompanied by letters from reputable persons, and employers, if any, who have been acquainted with the applicant since his discharge from prison, showing that he has lived a life of sobriety, industry and honesty, and that if he has a family, he has faithfully cared for it to the best of his ability.

IX. Upon the renewal of an application, new papers in conformity with the above, must be furnished.

X. If the applicant has been convicted of an offense or offenses other than that for which he seeks restoration, he must so state, and give the particulars required by Rule III in each. A restoration to citizenship covers only the particular offense therein recited.

XI. By reason of the pressing engagements of the governor during the session of the legislature, and for thirty days thereafter, no application will be considered or decided during that period, but applications will be received at any time, and considered in the order of their presentation after the period above mentioned.

XII. Applications must be indorsed with the name of the post-office address (with street and number, if any), of the person with whom correspondence may be had concerning the restoration, and to whom the writ, if granted, may be mailed.

XIII. Papers must be separately prepared in accordance with the above rules for each applicant for restortation.

18 .

To the Governor of the State of New York:

I hereby make application for restoration to citizenship.

My full name is (*Give name and alias in Roman letters, for example,* JOHN DOE. See Rule II), the name I gave on conviction was . I was convicted in the county of of the crime of in the court of Hon. , judge presiding, prosecuted by . district attorney; sentenced , 18 ; received in prison, county penitentiary, 18 , for the term of yrs., mos., fine, $; earned yrs., mos., days, for good conduct, and was discharged therefrom 18. (See Rule III.) I have not been convicted of any other offense except as follows (*if convicted of any other offense or offenses give particulars as required by Rule X*):

I made a previous application for restoration to citizenship on or about 18. (See Rule IV.) At the time of my conviction I resided at (see Rule III) . My history and occupation from the date of my discharge from prison to this date have been as follows (see Rule VII):

Annexed hereto and forming a part of this application is my certificate of discharge from prison, showing that I earned a reduction of my sentence for good conduct therein (see Rule V)
and letters from reputable persons, among them those of my employers since my discharge from prison, who have been well acquainted with me since that date, showing that I have lived a life of sobriety, industry and honesty (see Rule VIII), and that I have faithfully cared for my family to the best of my ability, which consists of the following persons (see Rule VI):

(*Petitioner sign name here.*)

STATE OF }
COUNTY OF } *ss.*

, being duly sworn, says the foregoing petition is true to his own knowledge, except to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. (See Rule I.)

(*Petitioner sign name here.*)

No. , Street,

Subscribed and sworn to before me, this }
day of 18 . }

No 344.

Pardons and Commutations.

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
ALBANY, *January*, 1892.

RULES GOVERNING APPLICATIONS FOR PARDONS AND COMMUTATIONS OF SENTENCE.

1. All applications and accompanying documents should be written in a distinct hand, and include the following papers, information and statements, prepared as hereinafter described.

a. A certified copy of the record of conviction.

b. The full name of the person for whom clemency is asked, accurately spelled in Roman Capital letters, for example: JOHN DOE — and the alias (if any), under which he may have been convicted, together with the names of those persons (if any) charged to have been connected with the same offense, and a statement as to whether the applicant has been previously convicted, and, if so, of what offense, and the sentence therefor.

2. Applications must be indorsed with the name and post-office address (with street and number, if any) of the person with whom correspondence may be had concerning the pardon or commutation.

3. Applications will not be received which contain the names of more than one person for whom clemency is asked. Papers must be separately prepared in each individual case.

4. A brief statement of the grounds upon which the application is based — a schedule of papers — the facts to sustain the grounds in the form of a history of the case — a brief abstract of the evidence as taken upon a preliminary examination, or before a coroner's jury, if no trial was had, or upon the trial, and letters from responsible persons in the community where the crime was committed, must be furnished.

5. All facts relied upon to sustain any allegation as a ground for clemency (other than certificates of prison officials, which are only furnished at the request of the governor), must be proved by affidavit.

6. In applications based upon the grounds of a mistrial, or improper conviction, the allegations must be sustained by such reasons and evidence as would have been a good ground for a new trial, and in applications based upon the ground of newly discovered evidence, the evidence must be such as would, in all probability, have produced an acquittal on a second trial; and where the court has overruled any motion for a new trial, based upon any of the foregoing grounds, such questions will not be reconsidered, except on the

recommendation of the judge before whom such motion was heard.

7. No abstract of evidence as taken on a preliminary examination, or before a coroner's jury, or upon a trial, will be received or considered unless it be approved by the judge before whom a plea of guilty was entered, or who presided at the trial, or by the district-attorney of the county in which the conviction was had, with an indorsement that it is in all respects a fair statement of the case.

8. In cases other than capital, where, in the discretion of the governor, it is necessary to file the whole evidence as taken upon the trial, it must be accompanied by a brief or abstract having reference to the original pages, and indorsed by one of the court officers as required by Rule 7.

9. No application that has been refused will be reconsidered, unless substantial grounds for reopening the case are formally presented in writing in the manner above set forth.

10. Under the statutes of the state of New York, notice is not required to be given to court officers. In all instances such officers are notified from the executive chamber of the application, and are requested, among other things, to give such opinion on the merits of the application as they may deem proper.

11. By reason of the pressing engagements of the governor during the session of the legislature, and for thirty days thereafter, no application will be considered or decided during that period, unless it be one which, by reason of the nature of the circumstances surrounding it, can not be delayed; but applications will be received as usual.

12. No applications will be considered in cases of sentences imposed by courts of special sessions, or sentences to imprisonment for a term which does not exceed one year, exclusive of a fine, except upon the sole ground of entire innocence of the offense charged, supported by the papers required by Rule 8; and only on this ground will applications for clemency be considered in cases of inmates of houses of refuge and reformatories.

13. No applications will be considered until all necessary inquiries are made and replies received.

14. Applications for clemency in capital cases must be presented at least two weeks prior to the date set for execution.

15. All applications will be considered in the order of their presentation, unless special reasons are given for precedence; and counsel will not be heard in their support, unless the circumstances are such that it is a matter of imperative necessity, and it is requested by the Governor.

16. All applications and communications should be addressed to "The Governor of the State of New York, Albany, N. Y."

17. These rules will be waived only in those cases wherein their enforcement would work manifest injustice.

ROSWELL P. FLOWER.

No. 345. Tables, Etc.

§ 697. Commutation for good behavior.

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
ALBANY, *March* 26, 1886.

The attention of all officers charged with the administration of the criminal law is directed to the provisions of section 697 of the Penal Code, as amended by chapter 68 of the Laws of 1886, which is as follows:

"§ 697. Where a convict is sentenced to be imprisoned in a state prison or a penitentiary for a longer period than one year, the court before which the conviction is had must limit the term of the sentence having reference to the probability of the convict earning a reduction of his or her term for good behavior, as provided by statute, and assuming that such reduction will be earned, so that it will expire between the month of March and the month of November, unless the exact period of the sentence is fixed by law."

This section, as amended, went into effect March 25, 1886.

The copies of commitments to the various prisons and penitentiaries and the reports of commutation received each month at the executive chamber, shows that ninety-five per centum of convicts earn the reduction allowed under the provisions of this statute.

The wise and humane intention of the act above quoted, which aims at the release of convicts during the season of mild weather, and when the chances of employment are the best, should be strictly observed.

It is also proper that attention should be directed to section 2 of chapter 21 of the Laws of 1886, which provides that in estimating commutation, all the terms under which a convict is imprisoned shall be construed as one continuing term.

For the convenience of courts, the following tables, showing the amount of commutation which may be earned on a given number of years or fractions thereof, have been prepared and issued.

DAVID B. HILL.

THE COMMUTATION ALLOWED BY LAW FOR GOOD BEHAVIOR, IS TWO MONTHS FOR THE FIRST YEAR, TWO MONTHS FOR THE SECOND YEAR, FOUR MONTHS FOR THE THIRD AND FOURTH, AND FIVE MONTHS EACH FOR THE FIFTH AND ALL SUBSEQUENT YEARS.

TABLE — *Showing Commutation on Sentences for YEARS, from* 1 *to* 35 *inclusive.*

SENT.	COMMUTATION.		SENT.	COMMUTATION.		SENT.	COMMUTATION.		SENT.	COMMUTATION.		SENT.	COMMUTATION.	
Years.	Years.	Months.	Years.	Years.	Months.	Years.	Years.	Months	Years.	Years.	Months.	Years.	Years.	Months.
1	.....	2	8	2	8	15	5	7	22	8	6	29	11	5
2	.....	4	9	3	1	16	6	.....	23	8	11	30	11	10
3	.....	8	10	3	6	17	6	5	24	9	4	31	12	3
4	1	.....	11	3	11	18	6	10	25	9	9	32	12	8
5	1	5	12	4	4	19	7	3	26	10	2	33	13	1
6	1	10	13	4	9	20	7	8	27	10	7	34	13	6
7	2	3	14	5	2	21	8	1	28	11	.....	35	13	11

Commutation on Sentences for YEARS and MONTHS from 1 to 35 Years inclusive.

Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.			Sentence.		Commutation.		
Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
1	.....	.....	2	.....	3	.....	.....	8	.....	5	.....	1	5	.....	7	.....	2	3	.....
1	1	.....	2	5	3	1	.....	8	10	5	1	1	5	12½	7	1	2	3	12½
1	2	.....	2	10	3	2	.....	8	20	5	2	1	5	25	7	2	2	3	25
1	3	.....	2	15	3	3	.....	9	.....	5	3	1	6	7½	7	3	2	4	7½
1	4	.....	2	20	3	4	.....	9	10	5	4	1	6	20	7	4	2	4	20
1	5	.....	2	25	3	5	.....	9	20	5	5	1	7	2½	7	5	2	5	2½
1	6	.....	3	.....	3	6	.....	10	.....	5	6	1	7	15	7	6	2	5	15
1	7	.....	3	5	3	7	.....	10	10	5	7	1	7	27½	7	7	2	5	27½
1	8	.....	3	10	3	8	.....	10	20	5	8	1	8	10	7	8	2	6	10
1	9	.....	3	15	3	9	.....	11	.....	5	9	1	8	22½	7	9	2	6	22½
1	10	.....	3	20	3	10	.....	11	10	5	10	1	9	5	7	10	2	7	5
1	11	.....	3	25	3	11	.....	11	20	5	11	1	9	17½	7	11	2	7	17½
2	.....	.....	4	.....	4	.....	1	....	.....	6	.....	1	10	.....	8	....	2	8	.....
2	1	.....	4	10	4	1	1	....	12½	6	1	1	10	12½	8	1	2	8	12½
2	2	.....	4	20	4	2	1	....	25	6	2	1	10	25	8	2	2	8	25
2	3	.....	5	.....	4	3	1	1	7½	6	3	1	11	7½	8	3	2	9	7½
2	4	.....	5	10	4	4	1	1	20	6	4	1	11	20	8	4	2	9	20
2	5	.....	5	20	4	5	1	2	2½	6	5	2	.....	2½	8	5	2	10	2½
2	6	.....	6	.....	4	6	1	2	15	6	6	2	.....	15	8	6	2	10	15
2	7	.....	6	10	4	7	1	2	27½	6	7	2	.....	27½	8	7	2	10	27½
2	8	.....	6	20	4	8	1	3	10	6	8	2	1	10	8	8	2	11	10
2	9	.....	7	.....	4	9	1	3	22½	6	9	2	1	22½	8	9	2	11	22½
2	10	.....	7	10	4	10	1	4	5	6	10	2	2	5	8	10	3	.....	5
2	11	.....	7	20	4	11	1	4	17½	6	11	2	2	17½	8	11	3	.....	17½

COMMUTATIONS — (*Continued*).

SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.		
Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
9	.....	3	1	.....	11	.....	3	11	.....	13	.....	4	9	.....	15	.....	5	7	.....
9	1	3	1	12½	11	1	3	11	12½	13	1	4	9	12½	15	1	5	7	12½
9	2	3	1	25	11	2	3	11	25	13	2	4	9	25	15	2	5	7	25
9	3	3	2	7½	11	3	4	....	7½	13	3	4	10	7½	15	3	5	8	7½
9	4	3	2	20	11	4	4	....	20	13	4	4	10	20	15	4	5	8	20
9	5	3	3	2½	11	5	4	1	2½	13	5	4	11	2½	15	5	5	9	2½
9	6	3	3	15	11	6	4	1	15	13	6	4	11	15	15	6	5	9	15
9	7	3	3	27½	11	7	4	1	27½	13	7	4	11	27½	15	7	5	9	27½
9	8	3	4	10	11	8	4	2	10	13	8	5	.....	10	15	8	5	10	10
9	9	3	4	22½	11	9	4	2	22½	13	9	5	.....	22½	15	9	5	10	22½
9	10	3	5	5	11	10	4	3	5	13	10	5	1	5	15	10	5	11	5
9	11	3	5	17½	11	11	4	3	17½	13	11	5	1	17½	15	11	5	11	17½
10	.....	3	6	.....	12	.....	4	4	.....	14	.....	5	2	.....	16	.....	6	.....	.....
10	1	3	6	12½	12	1	4	4	12½	14	1	5	2	12½	16	1	6	.....	12½
10	2	3	6	25	12	2	4	4	25	14	2	5	2	25	16	2	6	.....	25
10	3	3	7	7½	12	3	4	5	7½	14	3	5	3	7½	16	3	6	1	7½
10	4	3	7	20	12	4	4	5	20	14	4	5	3	20	16	4	6	1	20
10	5	3	8	2½	12	5	4	6	2½	14	5	5	4	2½	16	5	6	2	2½
10	6	3	8	15	12	6	4	6	15	14	6	5	4	15	16	6	6	2	15
10	7	3	8	27½	12	7	4	6	27½	14	7	5	4	27½	16	7	6	2	27½
10	8	3	9	10	12	8	4	7	10	14	8	5	5	10	16	8	6	3	10
10	9	3	9	22½	12	9	4	7	22½	14	9	5	5	22½	16	9	6	3	22½
10	10	3	10	5	12	10	4	8	5	14	10	5	6	5	16	10	6	4	5
10	11	3	10	17½	12	11	4	8	17½	14	11	5	6	17½	16	11	6	4	17½

COMMUTATIONS — (*Continued*).

SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.		
Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
17	.....	6	5	.....	19	.....	7	3	.....	21	.....	8	1	.....	23	.....	8	11	.....
17	1	6	5	12½	19	1	7	3	12½	21	1	8	1	12½	23	1	8	11	12½
17	2	6	5	25	19	2	7	3	25	21	2	8	1	25	23	2	8	11	25
17	3	6	6	7½	19	3	7	4	7½	21	3	8	2	7½	23	3	9	.....	7½
17	4	6	6	20	19	4	7	4	20	21	4	8	2	20	23	4	9	.....	20
17	5	6	7	2½	19	5	7	5	2½	21	5	8	3	2½	23	5	9	1	2½
17	6	6	7	15	19	6	7	5	15	21	6	8	3	15	23	6	9	1	15
17	7	6	7	27½	19	7	7	5	27½	21	7	8	3	27½	23	7	9	1	27½
17	8	6	8	10	19	8	7	6	10	21	8	8	4	10	23	8	9	2	10
17	9	6	8	22½	19	9	7	6	22½	21	9	8	4	22½	23	9	9	2	22½
17	10	6	9	5	19	10	7	7	5	21	10	8	5	5	23	10	9	8	5
17	11	6	9	17½	19	11	7	7	17½	21	11	8	5	17½	23	11	9	8	17½
18	.....	6	10	.....	20	.....	7	8	.....	22	.....	8	6	.....	24	.....	9	4	.....
18	1	6	10	12½	20	1	7	8	12½	22	1	8	6	12½	24	1	9	4	12½
18	2	6	10	25	20	2	7	8	25	22	2	8	6	25	24	2	9	4	25
18	3	6	11	7½	20	3	7	9	7½	22	3	8	7	7½	24	3	9	5	7½
18	4	6	11	20	20	4	7	9	20	22	4	8	7	20	24	4	9	5	20
18	5	7	.....	2½	20	5	7	10	2½	22	5	8	8	2½	24	5	9	6	2½
18	6	7	.....	15	20	6	7	10	15	22	6	8	8	15	24	6	9	6	15
18	7	7	.....	27½	20	7	7	10	27½	22	7	8	8	27½	24	7	9	6	27½
18	8	7	1	10	20	8	7	11	10	22	8	8	9	10	24	8	9	7	10
18	9	7	1	22½	20	9	7	11	22½	22	9	8	9	22½	24	9	9	7	22½
18	10	7	2	5	20	10	8	.....	5	22	10	8	10	5	24	10	9	8	5
18	11	7	2	17½	20	11	8	.....	17½	22	11	8	10	17½	24	11	9	8	17½

COMMUTATIONS — (*Continued*).

SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.		
Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
25	.....	9	9	.....	27	.....	10	7	.....	29	.....	11	5	.....	31	.....	12	3	.....
25	1	9	9	12½	27	1	10	7	12½	29	1	11	5	12½	31	1	12	3	12½
25	2	9	9	25	27	2	10	7	25	29	2	11	5	25	31	2	12	3	25
25	3	9	10	7½	27	3	10	8	7½	29	3	11	6	7½	31	3	12	4	7½
25	4	9	10	20	27	4	10	8	20	29	4	11	6	20	31	4	12	4	20
25	5	9	11	2½	27	5	10	9	2½	29	5	11	7	2½	31	5	12	5	2½
25	6	9	11	15	27	6	10	9	15	29	6	11	7	15	31	6	12	5	15
25	7	9	11	27½	27	7	10	9	27½	29	7	11	7	27½	31	7	12	5	27½
25	8	10	.....	10	27	8	10	10	10	29	8	11	8	10	31	8	12	6	10
25	9	10	.....	22½	27	9	10	10	22½	29	9	11	8	22½	31	9	12	6	22½
25	10	10	1	5	27	10	10	11	5	29	10	11	9	5	31	10	12	7	5
25	11	10	1	17½	27	11	10	11	17½	29	11	11	9	17½	31	11	12	7	17½
26	.....	10	2	.....	28	.....	11	.....	.....	30	.....	11	10	.....	32	.....	12	8	.....
26	1	10	2	12½	28	1	11	.....	12½	30	1	11	10	12½	32	1	12	8	12½
26	2	10	2	25	28	2	11	....	25	30	2	11	10	25	32	2	12	8	25
26	3	10	3	7½	28	3	11	1	7½	30	3	11	11	7½	32	3	12	9	7½
26	4	10	3	20	28	4	11	1	20	30	4	11	11	20	32	4	12	9	20
26	5	10	4	2½	28	5	11	2	2½	30	5	12	.....	2½	32	5	12	10	2½
26	6	10	4	15	28	6	11	2	15	30	6	12	.....	15	32	6	12	10	15
26	7	10	4	27½	28	7	11	2	27½	30	7	12	.....	27½	32	7	12	10	27½
26	8	10	5	10	28	8	11	3	10	30	8	12	1	10	32	8	12	11	10
26	9	10	5	22½	28	9	11	3	22½	30	9	12	1	22½	32	9	12	11	22½
26	10	10	6	5	28	10	11	4	5	30	10	12	2	5	32	10	13	.....	5
26	11	10	6	17½	28	11	11	4	17½	30	11	12	2	17½	32	11	13	.....	17½

COMMUTATIONS — (*Continued*).

SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION.			SENTENCE.		COMMUTATION			SENTENCE.		COMMUTATION.		
Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.	Yrs.	Mos.	Yrs.	Mos.	Days.
33	.....	13	1	.....	33	7	13	3	27½	34	1	13	6	12½	34	7	13	8	27½
33	1	13	1	12½	33	8	13	4	10	34	2	13	6	25	34	8	13	9	10
33	2	13	1	25	33	9	13	4	22½	34	3	13	7	7½	34	9	13	9	22½
33	3	13	2	7½	33	10	13	5	5	34	4	13	7	20	34	10	13	10	5
33	4	13	2	20	33	11	13	5	17½	34	5	13	8	2½	34	10	13	10	17½
33	5	13	3	2½	34	.....	13	6	.....	34	6	13	8	15	35	11	13	11	.....
33	6	13	3	15															

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THE

PENAL CODE

OF THE

STATE OF NEW YORK.

IN FORCE DECEMBER 1, 1882,

AS AMENDED BY LAWS OF 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891 AND 1892, WITH NOTES OF DECISIONS TO DATE,

A TABLE OF SOURCES

AND

A FULL INDEX.

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CERTIFICATE.

STATE OF NEW YORK,
OFFICE OF THE SECRETARY OF STATE, } *ss.:*

I, Frank Rice, Secretary of State, do hereby certify that the following book contains a correct transcript of the Penal Code, passed July 26, 1881, as amended by Laws of 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891 and 1892.

In witness whereof, I have hereunto set my signature, at the city of Albany, this 16th day of June, in the year one thousand eight hundred and ninety-two.

FRANK RICE,
Secretary of State.

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2 R. S., 983, § 4.
§ **668**
3 R. S., 975, §§ 41, 45, 49.
§ **669**
Id., 976, § 51.
§ **670**
1 R. S., 915, §§ 290, 291, 292.
§ **671**
Id., § 293.
§ **679**
See 3 R. S., 988, § 4; 929, § 7.
§ **680**
See id., 442, § 14.
§ **681**
Id.
§ **685**
See id., 994, § 47.
§ **686**
Id., 988, § 3; L. 1875, ch. 24.
§ **688**
Id., 989, §§ 10.
§ **689**
Id., § 9.
§ **693**
See id., 972, §§ 22, 23; L. 1845, ch. 260.
§ **694**
Id., 990, § 11.
§ **695**
See id.
§ **696**
Id., 990, § 12.
§ **697**
See ch. 171, L. 1886, § 6.
§ **698**
3 R. S., 1093, § 118.
§ **699**
Id., 993, § 36; see ch. 158, L. 1856.
§ **700**
Id., 1114, § 250.
§ **701**
Id., 990, § 20; 991, §§ 21, 22.
§ **702**
See id., § 12.
§ **703**
See id.
§ **704**
Id.
§ **705**
Id., 1093, § 120; id., 1094, § 124.
§ **707**
3 R. S., 994, § 39.
§ **708**
Id., § 40.
§ **709**
Id., § 41.
§ **710**
Id., § 42.
§ **711**
Id., § 44.
§ **714**
See § 832, Code Civil Pro.
§ **715**
3 R. S., 163, §§ 94, 95, 96.
§ **716**
Id., 990, §§ 20, 21, 22.
§ **717**
Id., § 18.
§ **721**
Id., 995, § 58.

THE PENAL CODE.

CHAPTER 676, LAWS OF 1881.

AS AMENDED BY LAWS OF 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891 and 1892.

AN ACT to establish a Penal Code.

PASSED July 26, 1881; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PRELIMINARY PROVISIONS.

SEC. 1. Title of Code.
2. Its effect.
3. Definition of "crime."
4. Division of crimes.
5. Definition of felony.
6. Definition of misdemeanor.
7. Objects of the Penal Code.
8. Procedure, how regulated.
9. Conviction must precede punishment.
10. Jury to find degree of crime.
11. General rules of construction of this act.
12. Of sections declaring crimes punishable.
13. Punishments, how determined.
14. Punishment of felonies when not fixed by statute
15. Id.; of misdemeanors.

SECTION 1. **Title of Code.**—This act shall be known as the Penal Code of the State of New York.

People v. Jaehne, 103 N. Y. 193; S. C., 4 N. Y. Cr. 479; Matter of Hallenbeck, 65 How. 401; S. C., 1 N. Y. Cr. 437, note; People v. Richards, 108 N. Y. 144; People v. Stevens, 109 id. 182; People v. Rugg, 98 id. 551; Fitzgerald v. Quann, 109 id. 445; People v. Palmer, id. 110; People v. McTameney, 30 Hun, 506; S. C., 13 Abb. N. C 56; 66 How. 75; People, *ex rel.* Pells, v. Supervisors, 65 N. Y. 305; People v. O'Brien, 111 id. 1.

§ 2. **When and how far Code takes effect.**—No act or omission begun after the beginning of the day on which this Code takes effect as a law, shall be deemed criminal or punishable, except as prescribed or authorized by this Code, or by some statute of this state not repealed by it. Any act or omission begun prior to that day may be inquired of, prosecuted and punished in the same manner as if this Code had not been passed.

Matter of Hallenbeck, 65 How. 401; People v. Beckwith, 108 N. Y. 72; S. C., 7 N. Y. Cr. 146; Darrow v. Family Fund Society, 116 id. 542; S. C., 27 N Y. State Rep'r, 476; 42 Hun, 249; People v. Raymond, 32 id. 123; People v. Sadler, 97 N. Y. 146; S. C., 3 N. Y. Cr. 474; Jaehne v. People, 6 id. 237; People v. Mortimer, 46 Cal. 114; People v. O'Neil, 109 N. Y. 261; People v. Bernardo, 1 N Y Cr. 245; People v. Moran, 51 Hun, 279; S. C., 7 N. Y. Cr. 329; People, *ex rel.* McDonald, 99 N. Y. 474; S. C., 2 N. Y. Cr. 108; 32 Hun, 589.

§ 3. **Definition of "crime."**—A crime is an act or omission forbidden by law, and punishable upon conviction by

1. Death; or
2. Imprisonment; or
3. Fine; or
4. Removal from office; or
5. Disqualification to hold any office of trust, honor, or profit under the state; or
6. Other penal discipline.

Malice when not an ingredient of prohibited act. People v. Reid, 47 Barb. 235. Acting under orders. People v. Mellus, 1 N. Y. Cr. 39. Power to make crime. People v. Hislop, 77 N. Y. 335; People v. Gillson, 109 id. 406; People v. West, 106 id. 295; Lawton v. Steele, 119 id. 233. What is crime. People, *ex rel.* Kopp, v. French, 102 N. Y. 583; S. C., 4 N. Y. Cr. 447, aff'g id. 300; S. C., 39 Hun, 507; People v. Barber, 48 id. 198; People, *ex rel.* Hislop, v. Cowles, 16 id. 577; aff'd, 77 N. Y. 331; People v. Stevens, 13 Wend. 341; People v. Smith, 5 Cow. 258; People v. Stevens, 109 N. Y. 159; S. C., 14 N. Y. State Rep'r, 809. Infamous crime. People v. Parr, 42 Hun, 313; United States v. Wynn, 9 Fed. Rep'r, 886; Matter of Wilson, 114 U. S. 417; Matter of McCluskey, 13 Cr. L. M. 210. Intent. People v. Burton, 1 N. Y. Cr. 297; 16 W. Dig. 195; Hamilton v. People, 57 Barb. 625; Morris v. People, 3 Denio, 381; People v. Reed, 47 Barb. 235; People v. Adams, 16 Hun, 549; 9 Crim. L. M. 139; People v. Hale, 1 N. Y. Cr. 533; People v. Hays, 1 Hill, 551; People v. Terrell, 33 N. Y. State Rep'r, 368; People v. Sullivan, 4 N. Y. Cr. 197. Malice. People v. Reed, 47 Barb. 235. See McCord v. People, 46 N. Y. 473; Calgan v. Wilson, 127 U. S. 540; Mayor, etc., v. Eisler, 2 N. Y. C. P. 125.

§ 4. **Division of crimes.**—A crime is either

1. A felony; or
2. A misdemeanor.

People v. Lyon, 99 N. Y. 219.

§ 5. **Definition of felony.**—A felony is a crime which is or may be punishable by either

1. Death; or
2. Imprisonment in a state prison.

Where power to imprison in state prison is discretionary, offense felony. People v. Van Steenburgh, 1 Park. 39; People v. Borges, 6 Abb. Pr. 132. See People v. Johnson, 46 id. 670; Benedict v. Williams, 48 id. 125; People v. Lyon, 99 N. Y. 219; S. C., 3 N. Y. Cr. 166; People v. Bork, 91 N. Y. 5; People v. Park, 41 id. 21; People v. Cole, 2 N. Y. Cr. 108; People v. Terrell, 33 N. Y. State Rep'r, 368; People v Dewey, id. 427; People v. Johnson, 110 N. Y. 141; Smith v. State, 33 Me. 48; S. C., 54 Am. Dec. 607.

§ 6. **Definition of misdemeanor.**—Any other crime is a misdemeanor.

People v. Lyon, 1 N. Y. Cr. 400; S. C., 99 N. Y. 219; People, *ex rel.* Devoe, v. Kelly, 97 id. 212; S. C., 2 N. Y. Cr. 432; 32 Hun, 536; People v. Faber, 93 N. Y. 149; People v. Finn, 26 Hun, 60; People v. Bogart, 3 Abb. 193.

§ 7. **Objects of the Penal Code.**—This Code specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each.

Matter of Hallenbeck, 65 How. 401; People v. Jaehne, 103 N. Y. 193; People v. McTameney, 30 Hun, 506; 1 N. Y. Cr. 437; 13 Abb. N. C. 58; 66 How. 70.

§ 8. **Procedure, how regulated.**—The manner of prosecuting and convicting criminals is regulated by the Code of Criminal Procedure. [CH. 442 of 1881.]

Matter of McDonald, 32 Hun, 589, n.; People v. Beckwith, 108 N. Y. 73.

§ 9. **Conviction must precede punishment.**—The punishments prescribed by this Code can be inflicted only upon a legal conviction in a court having jurisdiction.

See § 3, Code Cr. Proc.; Art. 1, § 1, N. Y. Const.; Davis v. Am. Soc., etc., 75 N. Y. 362. When a penalty excludes punishment. People v. Hislop, 77 N. Y. 331; *Ex parte* Janes, 30 How. Pr. 446. Increased punishment for locality. *Ex parte* Bayard, 25 Hun, 546, rev'g 61 How. Pr. 294. See *Ex parte* Coughlin, 62 id. 34; *Ex parte* Trimble, id. 61. Lawful act of one cannot be made *prima facie* evidence of another's guilt. People v. Lyon, 27 Hun, 180. Upon legal conviction. Matter of McDonald, 32 Hun, 589; 2 N. Y. Cr. 107, 140; Blaufus v. People, 69 N. Y. 107; Marion v. State, 16 Neb. 349. Void sentence. People v. Bork, 96 N. Y. 188. Jurisdiction. People v. Marra, 4 N. Y. Cr. 304.

§ 10. **Jury to find degree of crime.**—Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, must find the degree of the crime, of which he is guilty.

Code Cr. Proc., § 444; People v. Kelly, 35 Hun, 295; People v. Rugg, 98 N. Y. 537; S. C., 3 N. Y. Cr. 172. See §§ 35, 436, 437, *post*. Verdict. See §§ 436–438, 440, 35, *post*; McNevins v. People, 61 Barb. 307.

§ 11. **General rules of construction of this act.**—The rule that a penal statute is to be strictly construed does not apply to this Code or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law.

"Felonious intent" construed. People v. Moore, 37 Hun, 84. See People v. Kerin, 39 id. 631; People v. McTameney, 30 id. 506; 13 Abb. N. C. 56; 66 How. 70; 1 N. Y. Cr. 437; Matter of Hallenbeck, 65 How. 402; People, *ex rel.* Devoe, v. Kelly, 32 Hun, 540; S. C., 97 N. Y. 215; People v. Palmer, 43 Hun, 408; 17 W. Dig. 492; People v. Whedon, 2 N. Y. Cr. 318; People v. Bauer, 37 Hun, 408; Cowley v. People, 83 N. Y. 468; People v. Richards, 108 id. 139; Fitzgerald v. Quann, 109 id. 441; People v. Palmer, id. 117.

§ 12. **Of sections declaring crimes punishable.**—The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

See §§ 471 *et seq.* of Code Cr. Proc.; People v. Bauer, 37 Hun, 407; S. C., 3 N. Y. Cr. 433.

§ 13. **Punishments, how determined.**—Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars.

People v. Bauer, 37 Hun, 407; S. C., 3 N. Y. Cr. 433.
See § 705, *post*.

§ 14. **Punishment of felonies when not fixed by statute.**— A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this Code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both.

§ 15. **Punishment of misdemeanors.**— A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this Code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both.

See § 706, *post*.

Applicable. People v. McTameney, 30 Hun, 508; S. C., 13 Abb. N. C. 56; 1 N. Y. Cr. 437; 66 How. 75; Matter of Hallenbeck, 65 Id. 501; Loos v. Wilkinson, 51 Hun, 85; Foote v. People, 56 N. Y. 321; People v. Palmer, 43 Hun, 408; 5 N. Y. Cr. 107.

Not applicable. People v. Sadler, 3 N Y. Cr. 474.

Special Sessions. People v. Riseley, 38 Hun, 280; People v. Carter, 48 Id. 165; People v. Palmer, 43 Id. 408; 5 N. Y. Cr. 107; Clark v. Holderidge, 58 Barb. 61; Burns v. Norton, 35 N. Y. State Rep'r, 416. See § 717, Code Cr. Proc.

See 2 City Ct. 408, note.

TITLE I.

Persons Punishable for Crime.

SEC. 16. What persons are punishable criminally.
17. Presumption of responsibility in general.
18. Id., as to child under seven years.
19. Id., as to child of seven years or more.
20, 21 Irresponsibility, etc., of idiot, lunatic, etc.
22. Intoxicated persons.
23. Morbid criminal propensity.
24. Rule as to married woman.
25. Rule as to persons acting under threats, etc.
26. Id., when act done in defense of self or another.
27. Exemption of public ministers.

§ 16. **What persons are punishable criminally.**— The following persons are liable to punishment within the state:

1. A person who commits within the state any crime, in whole or in part;

2. A person who commits without the state any offense which, if committed within the state, would be larceny under the laws of the state, and is afterward found, with any of the property stolen or feloniously appropriated within this state;

3. A person who, being without the state, causes, procures, aids, or abets another to commit crime within the state;

4. A person who, being out of this state, abducts or kidnaps by force or fraud, any person contrary to the laws of the place where such act is committed, and brings, sends or conveys such person within the limits of this state, and is afterward found therein.

5. A person who, being out of this state and with intent to cause

within it a result contrary to the laws of this state, does an act which in its natural and usual course results in an act or effect contrary to its laws.

Ignorance does not excuse. Hamilton v. People, 57 Barb. 625. Criminal intent necessary to constitute breach of penal statute. Sturgess v. Maitland, Anth. N. P. 208. See Baker v. Richardson, 1 Cow. 77; Morris v. People, 3 Den. 381. Ignorance of penal statute is no excuse. Smith v. Brown, 1 Wend. 231. That defendant was illegally apprehended in foreign county, no objection to jurisdiction. People v. Rowe, 1 Sheld. 81. Subs. 4, 5; People v. Wright, 2 Cal. 213; People v. Gardner, 2 Johns. 477; People v. Schenck, id. 479; McCullough's case, 2 C. H. Rec. 45. See People v. Adams, 3 Den. 190; S. C., 1 N. Y. 173; People v. Bork, 91 N. Y. 5. Same act may be punishable under U. S. Stat. Abbott v. People, 75 N. Y. 602.

Jurisdiction. People v. Lyon, 1 N. Y. Cr. 400; 99 N. Y. 219; Adams v. People, 1 id. 173; People v. Wilson, 3 Park. 199; People v. Marine Court, 6 Hun, 214; People v. Lane, 1 Edm. Cases, 116; People v. Marra, 4 N. Y. Cr. 304; Western, etc., Co. v. Kilderhouse. 87 N. Y. 435; Com. v. White, 123 Mass. 430; 25 Am. Rep. 116; Langdon v. N. Y., etc., R. Co., 8 Ry. & Corp. L. J. 405; Wisconsin v. Pelican Ins. Co., 127 U. S. 265; Murphy v. English, 64 How. 362; People v. Bliven, 112 N. Y. 79.

See §§ 135, 540, 676, *post*.

§ 17. **Presumption of responsibility for acts.** — A person is presumed to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, except as otherwise prescribed in this Code.

Responsible for natural consequences. People v. Adams, 16 Hun, 549. Sanity is presumed. Walter v. People, 32 N. Y. 147; O'Brien v. People, 48 Barb. 274. Insanity must be affirmatively established. Sellick's case, 1 C. H. Rec. 185; People v. Robinson, 1 Park. 646; 2 id. 235. That one intends the necessary consequences of his acts, is also presumed. People v. Foster, 50 N. Y. 609; People v. Conroy, 97 id. 62, aff'g 33 Hun, 119.

§ 18. **Child under seven years.** — A child under the age of seven years is not capable of committing crime.

Moebus v. Herrman, 108 N. Y. 353; Stone v. Dry D., etc., R. Co., 115 id. 104; S. C., 23 N. Y. State Rep'r, 551; Kunz v. City of Troy. 104 N. Y. 344; Mangan v. Brooklyn R. Co., 38 id. 455; Fallon v. Central Park, etc., Co., 49 id. 255; McMahon v. Mayor, etc., 33 id. 642; Wendell v. N. Y. C. R. Co., 91 id. 420.

§ 19. **Child between seven and twelve.** — A child of the age of seven years, and under the age of twelve years, is presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him and to know its wrongfulness. Whenever in any legal proceedings it becomes necessary to determine the age of a child, the child may be produced for personal inspection, to enable the magistrate, court or jury, to determine the age thereby; and the court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of age. A copy of the record of baptism of any child in any parish register, or register kept in a church, or by a clergyman thereof, or a certificate of baptism duly authenticated by the person in charge of such register, or who administered said baptism, and also a transcript of the record of birth recorded in any bureau of vital statistics or board of health, duly authenticated by its secretary or under its seal, and the entries made in a family Bible, shall also be competent evidence upon the question of the age. [AMENDED CHAPS. 46 of 1884 AND 145 OF 1888.]

See § 279, *post*. Walker's case, 5 C. H. Rec. 137. See Stage's case, id. 177; People v. Davis, 1 Wh. C. C. 230.

Presumption. People v. Teller, 1 Wh. C. C. 231; People v. Randolph, 2 Park. 174; State v. Adams, 76 Mo. 355; State v. Tice, 6 West. 677; Willett v. Com., 13 Bush, 230; Angelo v. People, 96 Ill. 29; S. C., 36 Am. Rep. 132; Stone v. Dry D., etc., R. Co., 115 N. Y. 109.

Breach of peace. Bullock v. Babcock, 3 Wend. 391.

False pretenses. People v. Kendall, 25 Wend. 399; Doran v. Smith, 49 Vt. 353.

Felony. Angelo v. People, 96 Ill. 29.

Manslaughter. Irby v. State, 33 Ga. 496.

Murder. Godfrey v. State, 31 Ala. 323.

Rape. Com. v. Green, 2 Pick. 380; Law v. Com., 78 Va. 885; S. C., 40 Am. Rep. 750; see § 279, *post*.

Proof of age. *By personal inspection*. Matter of Serafino, 66 How. 178; State v. Arnold, 13 Ired. 184; Shingar v. State, 53 Ind. 251; People v. Plath, 3 N. Y. Cr. 129, rev'd on other grounds in 100 N. Y. 590; People v. Townsend, 3 Hill, 479; People v. Stott, 4 N. Y. Cr. 388; People, *ex rel*. Zeigler, v. Special Sessions, 10 Hun, 224.

By family Bible. People v. Sheppard, 5 N. Y. Cr. 132; S. C., 55 Hun, 565; 1 Greenl. Ev., § 104; 1 Phil. Ev. 255.

By infant's own testimony. Morrison v. Emsley, 53 Mich. 564; Cheever v. Congdon, 34 id. 296; Central R. Co. v. Coggin, 73 Ga. 689; Banks v. Metcalfe, 1 Wheeler Cas. 381.

See further 37 Alb. L. J. 130; 28 Eng. Rep. 516; 37 id. 702; § 933 of Code of Civ. Pro.

§ 20. **Irresponsibility of idiot, lunatic, etc.**—An act done by a person who is an idiot, imbecile, lunatic, or insane, is not a crime. A person cannot be tried, sentenced to any punishment, or punished for a crime, while he is in a state of idiocy, imbecility, lunacy, or insanity, so as to be incapable of understanding the proceeding or making his defense.

If reasonable doubt of sanity, must acquit. People v. McCann, 16 N. Y. 58; Wagner v. People, 2 Keyes, 684; Cole's case, 7 Abb. Pr. (N. S.) 321. See People v. Schryver, 42 N. Y. 1; Brotherton v. People, 75 id. 159; State v. Crawford, 11 Kans. 32; Polk v. State, 19 Ind. 170; Dove v. State, 3 Heisk. 348; Boswell v. Com., 20 Gratt. 860; State v. Marler, 2 Ala. 43; State v. Felter, 32 Ia. 49. See People v. Coffman, 24 Cal. 230; People v. Best, 39 id. 690. Lunatic, responsible during lucidity. Clark's case, 1 C. H. Rec. 176. Sanity at trial, no bearing on condition at time of offense. Freeman v. People, 4 Den. 9. Delirium from fever. People v. Beno Ville, 3 Abb. N. C. 125. Epileptic. Staudeman's case, id. 187; Jenisch's case, id. 200. Weakness of intellect no defense. Patterson v. People, 46 Barb. 625. Partial insanity. State v. Huting, 21 Mo. 464; Bovard v. State, 30 Miss. 600. Moral insanity not recognized. Chorci v. State, 31 Ga. 424; Humphreys v. State, 45 id. 190. See Scott v. Com., 4 Metc. (Ky.) 227; People v. Pine, 2 Barb. 566; Krom v. Schoonmaker, 3 id. 467; People v. Lake, 2 Park. 215. See O'Connell v. People, 62 How. Pr. 436; 89 N. Y. 377; Moett v. People, 85 N. Y. 373; Walker v. People, 88 id. 81; People v. Coleman, 1 N. Y. Cr. 1; People v. Carnel, 2 Edm. S. C. 200. Hereditary insanity. Walsh v. People, 88 N. Y. 458. Plea of not guilty raises question. Ostrander v. People, 28 Hun, 38. Momentary insanity. People v. Ross, 2 Edm. S. C. 413.

Defense of insanity. Anderson v. State, 25 Neb. 550; Conway v. State, 118 Ind. 482; Martina v. State, 105 id. 445; People v. Montgomery, 13 Abb. (N. S.) 207; Sanchez v. People, 4 Park. 585; S. C., 22 N. Y. 147; 18 How. 72; People v. Beno Ville, 3 Abb. N. C. 195; Lake v. People, 1 Park. 495; Waltz's case, 50 How. 204; Sindram v. People, 88 N. Y. 196; People v. Barber, 115 id. 475; McFarland's trial, 8 Abb. (N. S.) 57; People v. McElvaine, 36 N. Y. State Rep'r, 181; 125 N. Y. 600

Moral insanity Guiteau's case, 10 Fed. Rep'r, 161; Boswell v. State, 63 Ala. 307; 35 Am. Rep. 20; Charci v. State, 31 Ga. 424; People v. Pine, 2 Barb. 566; Krom v. Schoonmaker, 3 id. 467; State v. Potts, 100 N. C. 457; People v. Kerrigan, 73 Cal. 223.

Delirium tremens. People v. Carpenter, 102 N. Y. 250; S. C., 4 N. Y. Cr. 187; O'Brien v. People, 48 Barb. 274; Real v. People, 55 id. 551; 42 N. Y. 270; O'Connell v. People, 87 id. 377; 62 How. 436; Willis v. Com., 22 Alb. L. J. 176; Erwin v. State, 10 Tex. App. 700; People v. Mills, 98 N. Y. 176.

Mental disease. Parsons v. State, 36 Alb. L. J. 249; 81 Ala. 577; 60 Am. Rep. 193. See 36 Alb. L. J. 221; 63 Ala. 307.

Rule of responsibility. Walker v. People, 88 N. Y. 86; 1 N. Y. Cr. 27; People v. Coleman, id. 1; Willis v. People, 32 N. Y. 715; 5 Park. 621; Wagner v. People, 4 Abb. App. Dec. 509; 2 Keyes, 684; Casey v. People, 31 Hun, 158; 2 N. Y. Cr. 187; People v. Walworth, 4 id. 355; Flanagan v. People, 52 N. Y. 467; People v. Moett, 23 Hun, 60; People v. Waltz, 3 Abb. N. C. 209; 50 How. 204; People v. Sprague, 2 Park. 43; People v. Montgomery, 13 Abb. (N. S.) 207; United States v. Faulkner, 35 Fed. Rep'r, 730; Same v. Young, 7 Cr. L. M. 732; State v. Mowry, 37 Kans. 369; People v. Hoin, 62 Cal. 120; 45 Am. Rep. 651; State v. Potts, 100 N. C. 457; State v. Murray, 11 Ore. 413; State v. Bundy, 24 S. C. 439; 58 Am. Rep. 262; Kearney v. People, 11 Colo. 258; Cunningham v. State, 56 Miss. 269; 31 Am. Rep. 360; People v. McFarland, 8 Abb. (N. S.) 57.

Burden of proof. Brotherton v. People, 75 N. Y. 159; O'Connell v. People, 87 id. 377; People v. McCann, 16 id. 58; Walker v. People, 88 id. 81; People v. Cole, 7 Abb. (N. S.) 321; Casey v. People, 31 Hun, 158; Walters v. People, 32 N. Y. 147; Wagner v. People, 2 Keyes, 684; 4 Abb. App. Dec. 509; O'Brien v. People, 48 Barb. 274; People v. Schryver, 42 N. Y. 1; People v. Robinson, 1 Park. 649; Dacey v. People, 116 Ill. 555; State v. Lawrence, 57 Me. 574; State v. Hoyt, 46 Conn. 330; State v. Crawford, 11 Kans. 32; State v. Jones, 50 N. H. 369.

Proof. People v. Hawkins, 109 N. Y. 408; People v. Barber, 115 id. 457; People v. Kemmler, 119 id. 580; Real v. People, 42 id. 282; O'Brien v. People, 36 id. 276; People v. Packenham, 115 id. 200; Plake v. State, 121 Ind. 433; State v. Alexander, 30 S. C. 74; 14 Am. St. Rep. 879; People v. Wood, 36 N. Y. State Rep'r, 952; People v. McElvaine, 121 N. Y. 256; Same v. Same, 36 N. Y. State Rep'r, 181; 125 N. Y. 600.

§ 21. **Idiots, lunatics, etc., when excused from criminal liability.** — A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason, as either

1. Not to know the nature and quality of the act he was doing; or
2. Not to know that the act was wrong.

Where prisoner knows act unlawful, he is responsible. Willis v. People, 32 N. Y. 715; Flanagan v. People, 52 id. 467; Wagner v. People, 4 Abb. Dec. 509; People v. Montgomery, 13 Abb. Pr. (N. S.) 207; People v. Moett, 23 Hun, 60; Smith v. Com., 1 Duvall (Ky.), 224; Kriel v. Com., 5 Bush (Ky.), 362; People v. McDonnell, 47 Cal. 134; Hopps v. People, 31 Ill. 385; Spain v. State, 47 Ga. 553; Brown v. Com., 78 Penn. St. 122; State v. Johnson, 40 Conn. 136. Knowledge must be accompanied with reason to apply it. Macfarland's trial, 8 Abb. Pr. (N. S.) 57. Influence of spirits no defense, when knowledge of right and wrong. People v. Waltz, 50 How. Pr. 204. Feigned insanity. Waltz's case, 3 Abb. N. C. 209. Insane impulse. People v. Sprague, 2 Park. 43. Phrenzy, without derangement, no defense. Pierson's case, 3 C. H. Rec. 122; Sanchez v People, 4 Park. 535; 22 N. Y. 147. Monomania. Stevens v. State, 31 Ind. 485. See People v. Kline, Edm. S. C. 13; People v. Divine, id. 594; People v. Pine, 2 Barb. 566. Opinion of non-expert as to rational character of act, competent. People v. Conroy, 2 N. Y. Cr. 565.

See cases under last section.

§ 22. **Intoxicated persons, intent.** — No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

Voluntary intoxication furnishes no excuse. People v. Rogers, 18 N. Y. 9; People v. Smith, 2 Park. Cr. 223; People v. Robinson, id. 235; 1 id. 649; Kenny v. People, 27 How. Pr. 202; S. C., 31 N. Y. 330; Lanergan v. People, 6 Park. 209; Friery v. People, 54 Barb. 319; People v. Porter, 2 Park. 14; People v.

Fuller, id. 36; People v. Wiley, id. 19; People v. Hammill, id. 223; People v. Batting, 49 How. Pr. 392; People v. Eastwood, 3 Park 25; 14 N. Y. 562; State v. Harlow, 21 Mo. 446; Shanahan v. Com., 8 Bush, 463; Com. v. Hawkins, 3 Gray, 463; Rafferty v. People, 66 Ill. 118; Chorci v. State, 31 Ga. 424; Humphreys v. State, 45 id. 190. See People v. Lewis, 36 Cal. 531; Hale v. State, 11 Humph. 154; Pirtle v. State, 9 id. 663; Cluck v. State, 40 Ind. 263. Evidence of intoxication to explain motive and conduct. Lanergan v. People, *supra;* People v. Hammill, *supra;* Eastwood v. People, *supra;* State v. Gut, 13 Minn. 341; Kelly v. State, 3 Smed. & Marsh. 518; Golden v. State, 25 Ga. 527; Jones v. State, 29 id. 594; Jones v. Com., 75 Penn. St. 403; Gulliher v. Com , 2 Duvall (Ky.), 163; Smith v. Com., 11 id. 224; Curry v. Com., 2 Bush (Ky.), 7; Kriel v. Com., 5 id. 362; Blimm v. Com., 7 id. 320; Shanahan v. Com., 8 id. 463; State v. Horne, 9 Kans. 119; Nichols v. State, 8 Ohio (N. S.), 435; State v. Schingen, 20 Wis. 74; State v. Garvey, 11 Minn. 154. Where intoxication produces insanity. Lanergan v. People, *supra ;* O'Brien v. People, 48 Barb. 274; People v. Williams, 43 Cal. 344; Cromwell v. State, 1 Mart. & Yerg. 147; U. S. v. Drew, 5 Mason, 28; State v. McGonigal, 5 Harring. 510 Delirium tremens. O'Brien v. People, *supra;* Real v. People, 55 Barb. 551; S. C., 42 N. Y. 270; Maconnekey v. State, 5 Ohio (N. S.), 77; Willis v. Com. (Va.), 23 Alb. L. J. 176; People v. Cavanagh, 62 How. Pr. 187; People v. Pearce, 2 Edm S. C. 76; People v. Jones, id. 86; Flanigan v. People, 86 N. Y. 554; People v. O Connell, 87 id. 377. See People v. Cassiano, 17 W. Dig. 499; People v. Mills, 98 N. Y. 176.

See further People v. Conroy, 33 Hun, 119; 2 N. Y. Cr. 247; Kenny v. People, 31 N. Y. 330; 27 How. 202; Upstone v. People, 109 Ill. 169; Hopt v. People, 104 U. S. 631; People v. Burns, 33 Hun, 296; 2 N. Y. Cr. 415; Com. v. Hagenlock, 140 Mass. 125; Wood v. State, 34 Ark. 341; People v. Fish, 125 N. Y. 146; 34 N. Y. State Rep'r, 843; State v. Mowry, 37 Kans. 369; State v. Shores, 31 W. Va. 491; People v. Otto, 38 Hun, 97.

§ 23. **Morbid criminal propensity, no defense.** — A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

People v. Otto, 38 Hun, 97. See Huntington's trial and authorities cited; Flanagan v. People, 52 N. Y. 467; People v. Carpenter, 102 id. 250; 4 N. Y. Cr. 177; People v. Waltz, 50 How. 204.

§ 24. **Defense of duress, by married woman.** — It is not a defense, to a married woman charged with crime, that the alleged criminal act was committed by her in the presence of her husband.

Boyd's case, 3 C. H. Rec. 134; Goldstien *et al.* v. People, 10 W. Dig. 506; 82 N. Y. 231; Seiler v. People, 77 id. 411; People v. Ryland, 28 Hun, 568; aff'd, 2 N. Y. Cr. 438; 97 N. Y. 126; Brown's case, 3 C. H Rec. 56; Goodman's case, 6 id. 21; Rooney's case, 3 id. 126; Brandon's case, 4 id. 140; People v. Townsend, 3 Hill, 479; Quinlan v. People, 6 Park. 9.

§ 25. **Duress, how constituted.** — Where a crime is committed or participated in by two or more persons, and is committed, aided, or participated in by any one of them, only because, during the time of its commission, he is compelled to do, or to aid or participate in the act, by threats of another person engaged in the act or omission, and reasonable apprehension on his part of instant death or grievous bodily harm, in case he refuses, the threats and apprehension constitute duress, and excuse him.

Goldstein v. People, 82 N. Y. 231.

§ 26. **Act done in defense of self or another.** — An act, otherwise criminal, is justifiable when it is done to protect the person committing it, or another whom he is bound to protect, from inevitable and irreparable personal injury, and the injury could only be prevented

by the act, nothing more being done than is necessary to prevent the injury.

See *post*, §§ 203, 204, 205, 223; Code Cr. Proc., §§ 79, 80, 81.
Statutory offenses indictable, though penalty also. People v. Stevens, 13 Wend. 341; People v. Brown, 16 id. 561. A person attacked, if justified in reasonably apprehending great bodily harm and the danger imminent, may kill his assailant. Shorter v People, 2 N. Y. 193; Patterson v. People, 46 Barb. 625. See People v. Lamb, 54 Barb. 342; People v Austin, 1 Park. 154; People v. Cole, 4 id. 35; Pfomer v. People, id. 558; Uhl v. People, 5 id. 410. Party assailed must avoid attack, if possible, to justify resistance. People v. Sullivan, 7 N. Y. 396; People v. Cole, *supra;* People v. Harper, Edm. S. C. 180; Shorter v. People, *supra*. Resistance to prevent felony. Ruloff v. People, 45 N. Y. 213; People v. Hand, 4 Alb. L J. 91. Need not first invoke protection against anticipated assault. Evers v. People, 3 Hun, 716; 63 N. Y. 625. Defense of possession of real property. Corey v. People, 45 Barb. 262; Wood v. Phillips, 43 N. Y. 152; People v. Gulick, Lalor, 229; Harrington v. People, 6 Barb. 607. Defense of personal property. Gyre v. Culver, 47 Barb. 592; Morgan v. Durfee, 21 Alb. L. J. 215.
See People v. Lyons, 6 N. Y. Cr. 105; note on self-defense, id. 119; People v. Pearl, 76 Mich. 207; People v. Lennon, 71 id. 298; State v. Broussard, 39 La. Ann. 671; Sawyer v. People, 16 W. Dig. 394; People v. McGrath, 47 Hun, 325; Hall v. People, 18 W. Dig. 357; 2 N. Y. Cr. 134; Morgan v. Durfee, 21 Alb. L. J. 215; People v. Minisci, 12 N. Y. State Rep'r, 720.

§ 27. **Exemption of public ministers.**—Ambassadors and other public ministers from foreign governments, accredited to the president or government of the United States, and recognized according to the laws of the United States, with their secretaries, messengers, families and servants, are not liable to punishment in this state, but are to be returned to their own country for trial and punishment.

Wheat. Int. L. 264, § 6; 271, § 14; Vattel, 470, § 91, etc.; 1 Bish. Cr. L., § 58b. Act of Cong., Apr. 30, 1790, chap. 9, § 25. By treaty, assault by and upon German citizens, on board vessel in port, state courts have no jurisdiction, except as it disturbs the peace; People v. Marine Court, 6 Hun, 214.
Section 2, Art. 3 of Federal Const.

TITLE II.

Of Parties to Crime.

SEC. 28. Principal and accessory.
29. Definition of principal.
30. Definition of accessory.
31. All principals in misdemeanors.
32. Trial of accessories.
33. Punishment of accessories.

§ 28. **Principal and accessory.**—A party to a crime is, either
1. A principal; or,
2. An accessory.

§ 29. **Definition of principal.**—A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal.

People v. McMurray, 4 Park. 234; Wixson v. People, 5 id. 119; Carrington v. People, 6 id. 336; People v. Bliven, 112 N. Y. 82; 20 N. Y. State Rep'r, 487; People v. Katz, 23 How. 94; People v. Batterson, 50 Hun, 44; Leonard v. Poole, 114 N. Y. 371; People v. Ryland, 97 id. 126; People v. Brien, 53 Hun, 496; 25 N. Y. State Rep'r, 239; People v. Bassford, 21 W. Dig. 349; 3 N. Y. Cr.

343; People v. Fitzgerald, 5 id. 343; People v. Hall, 57 How. 342; State v. Kirk, 11 Ore. 505; United States v. Hughes, 34 Fed. Rep'r, 732; McCartney v. People, 83 N. Y. 413; People v. McElroy, 36 N. Y. State Rep'r, 650; People v. Sanborn, 46 Hun, 682; 14 N. Y. State Rep'r, 126; People v. Kief, 58 Hun, 344; 34 N. Y. State Rep'r, 533; aff'd, 126 N. Y. 661; 37 N. Y. State Rep'r, 479; People v. Phelps, 39 id. 599; People v. Cotto, 42 id. 715.

§ 30. **Definition of accessory.**—A person who, after the commission of a felony, harbors, conceals, or aids the offender, with intent that he may avoid or escape from arrest, trial, conviction, or punishment, having knowledge or reasonable ground to believe that such offender is liable to arrest, has been arrested, is indicted or convicted, or has committed a felony, is an accessory to the felony.

Innocent agent. People v. McMurray, 1 Sheld. 563; People v. Hall, 57 How. Pr. 342.

See People v. Dunn, 53 Hun, 381; 25 N. Y. State Rep'r, 460; 7 N. Y. Cr. 173; 6 N. Y. Supp. 805.

§ 31. **All principals in misdemeanors.**—A person who commits or participates in an act which would make him an accessory if the crime committed were a felony, is a principal and may be indicted and punished as such, if the crime be a misdemeanor.

See § 682, *post*.

People v. Erwin, 4 Den. 129; Lowenstein v. People, 54 Barb. 229; People v. Mathews, 4 Wend. 229; Ward v. People, 3 Hill, 395; Commonwealth v. Dale, 144 Mass. 363; People v. Lyon, 33 Hun, 623; 2 N. Y. Cr. 484.

§ 32. **Trial of accessories.**—An accessory to a felony may be indicted, tried, and convicted, either in the county where he became an accessory, or in the county where the principal felony was committed, and whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, and although the principal has been pardoned or otherwise discharged after conviction.

See § 126, *post*. Evidence. Levy v. People, 80 N. Y. 327; 19 Hun, 383. See Jones v. People, 20 Hun, 545; 81 N. Y., 637; People v. Lyon, 99 id. 210; People v. Ryland, 97 id. 126; People v. Gray, 25 Wend. 464; Starin v. People, 45 N. Y. 333; People v. Bassford, 3 N. Y. Cr. 219.

§ 33. **Punishment of accessory.**—Except in a case where a different punishment is specially prescribed by law, a person convicted as an accessory to a felony is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

TITLE III.

Degrees in the Commission of Crimes and Attempts to Commit Crimes.

SEC. 34. What is an attempt to commit a crime.
35. Prisoner indicted may be convicted of lesser crime, or attempt.
36. Acquittal or conviction bars indictment for another degree, or attempt.

§ 34. **Attempt to commit crime defined.**—An act, done with intent to commit a crime, and tending but failing to effect its commission, is an attempt to commit that crime.

See § 685, *post*.

People v. Lawton, 56 Barb. 126. Solicitations are not an attempt. Stable v. Commonwealth (Pa.), 22 Alb. L. L. 458 *Contra*, People v. Bush, 4 Hill, 134;

McDermott v. People, 5 Park. 102; Lamb v. State, 67 Md. 524; Whitesides v. State, 11 Lea, 474; Stabler v. Com., 95 Penn. St. 318; 22 Alb. L. J. 448.

Evil intent is not enough. People v. Moran, 123 N. Y. 256; 38 N.Y. State Rep'r, 398, rev'g 54 Hun, 279; 27 N. Y. State Rep'r, 20; 7 N. Y. Cr. 336; Darrow Fund Soc., 42 Hun, 245; aff'd, 116 N. Y. 542; Mulligan v. People, 5 Park. 105; People v. Johnson, 46 Hun, 670; Cox v. People, 82 Ill. 191; People v. Stiles, 75 Cal. 570; United States v. Stephens, 8 Sawyer, 116; State v. Gray, 19 Nev. 212; McDade v. People, 29 Mich. 50; Uhl's case, 6 Gratt. 706; Hicks v. Com., 13 Va. L J. 525; Marrette's case, 3 C. H. Rec. 60; People v. Murray, 14 Cal. 159; People v. Jones, 46 Mich. 441; Com. v. McDonald, 5 Cush. 365; State v. Beal, 37 Ohio, 108; Kunkle v. State, 32 Ind. 520; Hamilton v. State, 36 id. 280; State v. Wilson, 30 Conn. 500; Sullivan v. People, 27 Hun, 35; People v. O'Connell, 60 id. 114; 38 N. Y. State Rep'r, 109; People v. Phelps, 39 id. 599; 61 Hun, 115.

§ 35. Prisoner indicted may be convicted of lesser crime, or attempt. — Upon the trial of an indictment, the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime.

See Code Civ. Proc., §§ 414, 415; and § 10, *ante;* § 685, *post.*

People v. Jackson, 3 Hill, 92; People v. Saunders, 4 Park. 196; Keefe v. People, 40 N. Y. 348; Dedieu v. People, 22 id. 178; People v. Lyon, 1 N. Y. Cr. 400; People v. Palmer, 43 Hun, 400; 8 N. Y. State Rep'r, 500; 5 N. Y. Cr. 105; People v. McCallum, 3 id. 199; People v. Sullivan, 4 id. 197; Murphy v. People, 3 Hun, 114; People v. McTameney, 30 Hun, 505; 13 Abb. N. C. 55; 66 How. 70; 1 N. Y. Cr. 437; People v. Dartmore, 48 Hun, 321; 2 N. Y. Supp. 310; People v. Lohman, 2 Barb. 216; Cox v. People, 80 N. Y. 514; Keefe v. People, 40 id. 348; 7 Abb. (N. S.) 76; People v. McDonnell, 92 N. Y. 657; 1 N. Y. Cr. 366; Ruloff v. People, 45 N. Y. 213; 11 Abb. (N. S.) 245; Nevins v. People, 61 Barb. 307; People v. Thompson, 41 N. Y. 1; People v. Lawton, 56 Barb. 126; Sindram v. People, 88 N. Y. 196; People v. Willson, 109 id. 347; People v. Petmecky, 2 N. Y. Cr. 452; Sullivan v. People, 27 Hun, 35; People v. McDonald, 49 id. 67; People v. O'Connell, 60 id. 113; 38 N. Y. State Rep'r, 108; People v. Palmer, 43 id. 397; People v. Dartmore, 48 id. 321.

§ 36. Acquittal or conviction bars indictment for another degree, or attempt. — Where a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime, in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof.

Art. 1, § 6, N. Y. Const.; Guenther v. People, 24 N. Y. 100; People v. Dowling, 23 Alb. L. J. 353; People v. Saunders, *supra;* People v. Casborus, 13 Johns. 351; People v. Cignarale, 110 N. Y. 23; People v. Palmer, 109 id. 419; People v. McCarthy, 110 id. 315; People v. Dowling, 84 id. 478; People v. Palmer, 43 Hun, 397; People v. McDonald, 49 id. 70; People v. Seeley, 3 N. Y. Cr. 225; People v. Warren, 109 N. Y. 615; Johnson v. State, 29 Ark. 31.

TITLE IV.

Treason.

Sec. 37. Treason against the state defined.
38. Id., how punished.
39. Levying war defined.
40. Resistance to a statute, when levying war.

§ 37. Treason defined.—Treason against the people of the state consists in

1. Levying war against the people of the state, within this state; or
2. A combination of two or more persons by force to usurp the

government of the state, or to overturn the same, shown by a forcible attempt, made within the state, to accomplish that purpose; or

3. Adhering to the enemies of the state, while separately engaged in war with a foreign enemy, in a case prescribed in the constitution of the United States, or giving to such enemies aid and comfort within the state or elsewhere.

People v. McLeod, 25 Wend. 482; S. C., 1 Hill, 377. Adhering to the enemies of the U. S., not treason against the state, and not indictable in state courts. People v. Lynch, 11 Johns. 549. Entering service of enemies. Respondent v. McCarty, 2 Dall. 86; Robert's case, 1 id. 39. Restoring prisoners. United States v. Hodges, 2 Wh. C. C. 477. Resisting act of congress. United States v. Hannay, 2 Wall. Jr. 139.

§ 38. **Punishment of treason.**—Treason is punishable by death.

Code Cr. Proc., §§ 396, 397, 814, 826; § 5, art. 4, of N. Y. State Const.; § 3, art. 3, of Fed. Const.

§ 39. **Levying war defined.**—To constitute levying war against the people of this state, an actual act of war must be committed. To conspire to levy war is not enough.

Levying war. *Ex parte* Bollman, 4 Cranch, 75; United States v. Greathouse, 2 Abb. 364; United States v. Hoxie, 1 Paine, 265; United States v. Poyer, 3 Wash. C. C. 234; Burr's trial (Combs' ed.) 312.

§ 40. **Resistance to a statute, when levying war.**—Where persons rise in insurrection with intent to prevent in general by force and intimidation, the execution of a statute of this state, or to force its repeal, they are guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war.

United States v. Mitchell, 2 Dall. 348; United States v. Hannay, 2 Wall. Jr. 139, 203; United States v. Hoxie, *supra;* U. S. v. Vigol, 2 Dall. 346; *Ex parte* Bollman, *supra.*

TITLE V.

Of Crimes against the Elective Franchise.

SEC. 41. Misdemeanors at political caucuses and conventions.
41a. False registration.
41b. Mutilation, destruction or loss of registry list.
41c. Misconduct of registry officers.
41d. Failure of house dweller to answer inquiries.
41e. Removal, mutilation or destruction of election supplies, poll-lists or cards of instruction.
41f. Refusal to permit employes to attend election.
41g. Misconduct in relation to certificates of nomination and official ballots.
41h. Failure to deliver official ballots.
41i. Misconduct of election officers and watchers.
41j. Violation of election law by public officer.
41k. Misdemeanors in relation to elections.
41l. Voting after conviction of infamous crime.
41m. Voting by inhabitant of another state or country.
41n. False returns.
41o. Furnishing money or entertainment to induce attendance at polls.
41p. Giving considerations for franchise
41q. Receiving consideration for franchise.
41r. Testimony upon prosecution.
41s. Bribery or intimidation of elector in military service of United States.

SEC. 41t. Duress and intimation* of voters.
41u. Political assessment.
41v. Corrupt use of position or authority.
41w. Failure to file candidates' statement of expenses.

§ 41. **Misdemeanors at political caucuses and conventions.**—Any person who,

1. Votes or attempts to vote at a political caucus or convention without being entitled to do so; or

2. By bribery, menace or other corrupt means, directly or indirectly, attempts to influence the vote of any person entitled to vote at such caucus or convention, or obstructs such person in voting, or prevents him from voting thereat; or

3. Fraudulently and wrongfully does any act tending to effect* the result of an election at such caucus or convention; or

4. Being an officer, teller or canvasser thereof, willfully omits, refuses or neglects to do any act required by the election law, or refuses to permit any person to do any act authorized thereby, or makes or attempts to make any false canvass of the ballots cast at such caucus or convention, or statement of the result of a canvass of the ballots cast thereat; or

5. Induces or attempts to induce any officer, teller or canvasser of such caucus or convention to do any act in violation of his duty;

Is guilty of a misdemeanor.

R. S. 458, L. 1882, ch. 154, §§ 1, 3.
Id. 462, L. 1887, ch. 265, §§ 17, 19.

§ 41a. **False registration.**— Any person who causes his name to be placed upon any list or register of voters in more than one election district for the same election, or upon a list or register of voters, knowing that he will not be qualified voter in the district at the election for which such list or register is made, or aids or abets any such act, is punishable by imprisonment for not more than five years.

L. 1890, ch. 321, § 21.

§ 41b. **Mutilation, destruction or loss of registry list.**— Any person who willfully loses, destroys or mutilates the list or register of voters in any election district, or a certified copy thereof, after the making of the same and before the closing of the polls of the election for which the same is made is guilty of a misdemeanor.

L. 1890, ch. 321, § 21.

41c. **Misconduct of registry officers.**—Any member or clerk of a registry board who willfully violates any provisions of the election law relating to the registration of electors, or is guilty of any fraud in the execution of the duties of his office, shall be punishable by imprisonment for not less than two nor more than ten years.

L. 1890, ch. 321, § 21.

41d. **Failure of house-dwellers to answer inquiries.**— Any person dwelling in a building in a city who willfully refuses to truly answer any question asked by any elector of such city, between the first meeting of the boards of registry therein for any election and

* So in original.

the closing of the polls of such election, relating to the residence and qualifications as a voter of any person dwelling in such building, or of any person who appears upon the list or register of voters made by a board of registry as residing at such building, is guilty of a misdemeanor.

L. 1890, ch. 321, § 15.

§ 41e. **Removal, mutilation or destruction of election supplies, poll-lists or cards of instruction.**— Any person who,

1. During an election or town meeting, willfully removes or destroys any of the supplies or other conveniences placed in the voting booths or compartments in pursuance of law; or

2. Before the closing of the polls, willfully defaces or destroys any list of candidates to be voted for at such election or town meeting posted in accordance with the election law; or

3. During an election or town meeting, willfully removes or defaces the cards for the instruction of voters, posted in accordance with the election law, is guilty of a misdemeanor.

L. 1890, ch. 321, § 21.

§ 41f. **Refusal to permit employes to attend election.**— A person or corporation who refuses to an employe entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employe to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

L. 1890, ch. 321, § 36.

§ 41g. **Misconduct in relation to certificates of nomination, and official ballots.** — A person who,

1. Falsely makes or makes oath to, or fraudulently defaces or destroys, a certificate of nomination or any part thereof; or

2. Files or receives for filing a certificate of nomination knowing that any part thereof was falsely made; or

3. Suppresses a certificate of nomination which has been duly filed, or any part thereof; or

4. Forges or falsely makes the official indorsement of any ballot; or

5. Having charge of official ballots, destroys, conceals or suppresses them, except as provided by law,

Is punishable by imprisonment for not less than one nor more than five years.

L. 1890, ch. 321, §§ 32, 34.

§ 41h. **Failure to deliver official ballots.** — Any person who has undertaken to deliver official ballots to any city, town or village clerk, or inspector, as authorized by the election law, and neglects or refuses to do so, is guilty of a misdemeanor.

§ 41i. **Misconduct of election officers and watchers.** — Any election officer or watcher who,

1. Reveals to another person the name of any candidate for whom a voter has voted; or

2. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or

3. Places a mark upon a ballot or does any other act by which one ballot can be distinguished from another, is punishable by imprisonment for not less than six months, nor more than one year.

L. 1890, ch. 321, § 34.

§ 41j. **Violation of election law by public officer.** — A public officer who omits, refuses or neglects to perform any act required of him by the election law, or refuses to permit the doing of any act authorized thereby, is, if not otherwise provided by law, punishable by imprisonment for not more than three years, or by a fine of not more than three thousand dollars, or both.

L. 1890, ch. 321, § 34.
R. S. 440, L. 1880, ch. 56, § 20.

§ 41k. **Misdemeanors in relation to elections.**— Any person who,

1. Acts as an inspector of election, poll clerk or ballot clerk, without being able to read and write the English language, or without being otherwise qualified to hold such office; or

2. Being an inspector of election, knowingly and willfully permits or suffers any person to vote who is not entitled to vote thereat; or

3. Willfully and lawfully obstructs, hinders or delays, or aids or assists in obstructing or delaying any elector on his way to a polling place, or while he is attempting to vote; or

4. Electioneers on election day within a polling place, or in a public street or room, or in any public manner, within one hundred and fifty feet of a polling-place; or

5. Knowingly votes or offers to vote at any election, when not qualified therefor; or

6. Procures, aids, assists, counsels or advises any person to go or come into any town, ward, or election district, for the purpose of voting at an election, knowing that such person is not qualified; or

7. Votes or offers to vote at an election more than once, in an election district or place where he does not reside; or

8. Procures, aids, assists, commands or advises another to vote or offer to vote at an election, knowing that such person is not qualified to vote thereat; or

9. Removes any official ballot from a polling-place before the closing of the polls; or

10. Shows his ballot after it is prepared for voting to any person, so as to reveal the contents, or solicits a voter to show the same; or

11. Places any mark upon his ballot, or does any other act in connection with his ballot, with the intent that it may be identified as the one voted by him; or

12. Places any mark upon, or does any other act in connection with a ballot or paster ballot, with the intent that it may afterwards be identified as having been voted by any particular person; or

13. Receives an official ballot from any person other than one of the ballot clerks having charge of the ballots; or

14. Not being a ballot clerk, delivers an official ballot to a voter; or

15. Not being an inspector of election, receives from any voter a ballot prepared for voting; or

16. Fails to return to the ballot clerks, before leaving the polling place or going outside the guard rail, each ballot not voted by him; or

17. Willfully disobeys any lawful command of the board of inspect-

ors, is guilty of a misdemeanor. This section shall apply to general and special elections and town meetings, but nothing therein shall prevent any person from receiving or delivering an unofficial sample ballot, or from receiving, delivering and voting an unofficial ballot as authorized by the election law.

R. S. 430-1, L. 1842, ch. 130, tit. VII, §§ 9, 10, 11, 12, 13.
Id. 456, L. 1864, ch. 253, §§ 9, 10.
Id. 438, L. 1880, ch. 56, §§ 1, 2.
Id. 432, L. 1847, ch. 240, § 16.
L. 1890, ch. 262, § 35.

§ 411. **Voting after conviction of infamous crime.** — Any person who has been convicted of an infamous crime and has been sentenced or committed therefor to a state prison or penitentiary, who votes at any election unless he shall have been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor.

R. S. 419, L. 1842, ch. 130, tit. IV, § 23.
L. 1875, ch. 138.

§ 41m. **Voting by an inhabitant of another state or country.** — Any inhabitant of another state or country who votes or offers to vote at an election or town meeting in this state, is guilty of a felony.

R. S. 431, L. 1842, ch. 130, tit. VII, § 13.

§ 41n. **False returns.** — An inspector or poll clerk of an election or town meeting, who intentionally makes, or attempts to make, a false canvass of the ballots cast thereat, or any false statement of the result of a canvass, though not signed by a majority of the inspectors, or any person who induces or attempts to induce any such inspector or clerk so to do, is guilty of a felony.

R. S. 439, L. 1880, ch. 56, §§ 18-19.

§ 41o. **Furnishing money or entertainment to induce attendance at polls.** — Any person who, with the intent to promote the election of a person to an elective office:

1. Furnishes entertainment to the electors before or during an election or town meeting at which such person is a candidate; or
2. Pays for, procures, or engages to pay for such entertainment; or
3. Furnishes money or other property, or engages to compensate any person, for procuring the attendance of voters at the polls of such election or town meeting; or
4. Contributes money for any other purpose than the printing and circulating of hand bills, books and other papers previous to an election or town meeting, or conveying such* poor or infirm electors to the polls, is guilty of a misdemeanor.

R. S. 430, L. 1842, ch. 130, tit. VII, § 6.

41p. **Giving considerations for franchise.**—Any person who, directly or indirectly, by himself or through any other person:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to vote or refrain from voting at such election for any particular person or persons, or to induce such voter to come to the polls or remain away

* So in original.

from the polls at such election or on account of such voter having voted or refrained from voting, or having voted or refrained from voting for any particular person, or having come to the polls or remained away from the polls at such election; or

2. Gives, offers or promises any office, place or employment, or promises to procure, or endeavor to procure any office, place or employment to or for any voter or to or for any other person, in order to induce such voter to vote or refrain from voting at such election for any particular person or persons; or

3. Makes any gift, loan, promise, offer, procurement or agreement, as aforesaid, to, for or with any person in order to induce such person to procure or endeavor to procure the election of any person, or the vote of any voter at any election; or

4. Procures or engages, or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement or agreement, the election of any person or the vote of any voter at such election; or

5. Advances, pays, or causes to be paid, any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays, or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or partly expended in bribery at any election,

Is guilty of an infamous crime, punishment* by imprisonment for not less than three months, nor more than one year, and in addition, forfeits any office to which he may have been elected at the election with reference to which such offense was committed.

§ 41q. **Receiving considerations for franchise.** —Any person who, directly or indirectly, by himself or through any other person:

1. Receives, agrees, or contracts for, before or during an election, any money, gift, loan, or other valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for any particular person or persons at any election; or

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such election, or on account of himself or any other person having voted or refrained from voting for any particular person at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting for any particular person or persons at such election,

Is guilty of an infamous crime, punishable by imprisonment for not less than three months nor more than one year, and in addition shall be excluded from the right of suffrage for five years after such conviction; and the clerk of the county in which such person is convicted shall transmit a certified copy of the record of conviction to the

* So in original.

clerk of each county of the state, within ten days thereafter, which copy shall be filed in his office by each of such clerks.

§ 41r. **Testimony upon prosecution.**—A person offending against any provision of section forty-one-q or of section forty-one-r of this Code isa competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing or proceeding, or investigation in the same manner as any other person. The testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment, prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

§ 41s. **Bribery or intimidation of elector in military service of United States.**—Any person who, directly or indirectly, by bribery, menace or other corrupt means, controls or attempts to control an elector of this state enlisted in the military service of the United States, in the exercise of his rights under the election law, or annoys, injures or punishes him for the manner in which he exercises such right, is guilty of a misdemeanor for which he may be tried at any future time when he may be found within this state ; and upon conviction thereof shall thereafter be ineligible to any office therein.

R. S. 437, L. 1864, ch. 253, § 13.

§ 41t. **Duress and intimidation of voters.**—Any person or corporation, who, directly or indirectly,

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict, any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person having voted or refrained from voting at any election ; or,

2. By abduction, duress, or any forcible or fraudulent device or contrivance whatever, impedes, prevents, or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for any particular person at any election ; or,

3. Being an employer, pays his employes the salary or wages due, inclosed in "pay envelopes," upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employes ; or within ninety days of a general election, put or otherwise exhibits in the establishment or place where his employes are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employes reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employes,

Is guilty of a misdemeanor, and if a corporation, in addition, forfeit its charter.

§ **41u. Political assessments.**— Any person who,

1. Being an officer or employe of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employe of the state or a political subdivision thereof, to pay or promise to pay any political assessments; or

2. Being an officer or employe of the state, or of a political subdivision thereof, directly or indirectly, gives, pays or hands over to any other such officer or employe any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employe to pay or contribute any money or other valuable thing for any such purpose or object; or

3. Being such an officer or employe and having charge or control of any building, office or room occupied for any purpose of the state or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment;

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employe; or

6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employe,

Is guilty of a misdemeanor.

R. S. 459, L. 1883, ch. 422, §§ 1, 2, 4.
R. S. 450, L. 1883, ch. 354, §§ 11, 12.
L. 1884, ch. 357.

§ **41v. Corrupt use of position or authority.**— Any person who,

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or

2. Being a public officer or employe of the state or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employe, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employe, or on account of the vote or political action of such officer or employe; or

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any

such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof, or

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein or exemption from removal or discharge therefrom, is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both.

R. S. 551, L. 1883, ch. 354, § 14.
Id 459-60, L. 1883, ch. 422, §§ 3, 7, 8.

41w. Failure to file candidate's statement of expenses.— Every candidate who is voted for at any public election held within this state shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire state, or any division or district thereof greater than a county, shall file their statements in the office of secretary of state. The candidates for town, village and city offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs. Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor, and shall also forfeit his office.

TITLE VI.

Of Crimes by and against the Executive Power of the State.

SEC. 42. Acting in a public office without having qualified.
43. Acts of officer de facto, not affected.
44. Giving or offering bribes.
45. Asking or receiving bribes.
46. Attempting to prevent officers from performing duty.
47. Resisting officers.
48. Taking unlawful fees.
49. Asking or taking reward for omitting or delaying official acts.
50. Taking fees for services not rendered.
51. Taking unlawful reward for services in extradition of fugitives.
52. Corrupt bargain for appointments, etc.

SEC. 53. Same.
54. Selling right to official powers.
55. Such appointment avoided by conviction.
56. Intrusion into public office.
57. Officer refusing to surrender to successor.
58. Administrative officers.

§ 42. **Acting in a public office without having qualified.** — A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his right to the office.

Foot v. Stiles *et al.*, 57 N. Y. 399; Weeks v. Ellis, 2 Barb. 321; People v. Stevens, 5 Hill, 617; McKinstry v. Tanner, 9 Johns. 135; People v. Collins, 7 id. 549.

§ 43. **Acts of officer de facto, valid.** — The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Who a *de facto* officer. People, *ex rel.* Sinkler, v. Terry, 108 N. Y. 1; Hamlin v. Dingman, 5 Lans. 51; Greenleaf v. Low, 4 Denio, 168; Read v. Buffalo, 3 Keyes, 445; Wilcox v. Smith, 5 Wend. 231; Conover v. Devlin, 15 How. 470; People v. Albertson, 8 id. 363; Rochester & G. V. R. Co. v. Clark Nat. Bk., 60 Barb. 234; People v. Peabody, 6 Abb. 228. Acts valid as to public. Foot v. Stiles, 57 N. Y. 399; Weeks v. Ellis, 2 Barb. 321; People v. Stevens, 5 Hill, 617; McKinstry v. Tanner, 9 Johns. 135; People v. Collins, 7 id. 549; People v. Cook, 14 Barb. 394.

§ 44. **Giving or offering bribes to public officers.** — A person who gives or offers a bribe to any executive officer of this state with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or by both.

State v. Ellis, 4 Vroom, 102; People v. Sharp, 107 N. Y. 427, 439.

§ 45. **Asking or receiving bribes.** — An executive officer, or person elected or appointed to an executive office, who asks, receives or agrees to receive any bribe, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in a state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state.

People v. Markham, 64 Cal. 147; 49 Am. Rep. 700; Walsh v. People, 65 Ill. 58; 16 Am. Rep. 569.

§ 46. **Attempting to prevent officers from performing duty.** — A person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

See §§ 61, 62, 63, 127, *post*.
People v. Palmer, 43 Hun, 397; 5 N. Y. Cr. 101; People v. Hall, 31 Hun, 404; 2 N. Y. Cr. 134; Smith v. Botens, 36 N. Y. State Rep'r, 54.

§ 47. **Resisting officers.** — A person who knowingly resists by the use of force or violence, any executive officer, in the performance of his duty, is guilty of a misdemeanor.

See § 124, *post*.

§ 48. **Taking unlawful fees.** — A public officer or a deputy, clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner act for or in behalf of any such officer, who asks or receives, or consents or agrees to receive, any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both. (Am'd ch. 336, Laws 1890: in effect Sept. 1, 1890.)

Supvs., etc. v. Briggs, 2 Den. 41; Parker v. Newman, 1 Hill, 87; People v. Whaley, 6 Cow. 661; Stevens v. Adams, 23 Wend. 57; Adams v. Stevens, 25 id. 451; Amer. Ex. F. Ins. Co. v. Britton *et al.*, 8 Bosw. 148; Lynch v. Meyers, 3 Daly, 256; Crofut v. Brandt, 13 Abb. Pr. (N. S.) 128; Lane v. State, 2 E. R. 805.

§ 49. **Asking or receiving reward for omitting or delaying official acts.** — An executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

§ 50. **Taking fees for services not rendered.** — An executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

People v. Whaley, 6 Cow. 661; Wendell v. Lewis, 8 Pai. 613; Lynch v. Meyers, 3 Daly, 256; Crofut v. Brandt, 13 Abb. Pr. (N. S.) 128; Parker v. Newland, 1 Hill, 87.

§ 51. **Taking unlawful reward in extradition cases.**— An officer of this state who asks or receives any fee or compensation of any kind for any service rendered or expense incurred in procuring from the governor of this state a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice; or for any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this state or for detaining him therein, except upon an employment by the governor of this state is guilty of a misdemeanor.

Code Cr. Proc., §§ 836, 837. People, *ex rel.* Gardenier, v. Board, etc., 56 Hun, 20; 29 N. Y. State Rep'r, 457, rev'g 17 id. 987; 2 N. Y. Supp. 353.

§ 52. **Offering reward for appointments, etc.** — A person who gives or offers to give, any gratuity or reward, in consideration that

himself or any other person shall be appointed to a public office, or to a clerkship, deputation, or other subordinate position, in such an office, or shall be permitted to exercise, perform, or discharge any prerogatives or duties, or to receive any emoluments, of such an office, is guilty of a misdemeanor.

Becker v. Ten Eyck, 6 Paige, 68; Tappen v. Brown, 9 Wend. 175; Mott v. Robins, 1 Hill, 21; Robinson v. Kalbfleisch, 5 Th. & C. 212; Gray v. Hook, 4 N. Y. 449; State v. Purdy, 36 Wis. 213; 17 Am. Rep. 485.

§ 53. **Asking or receiving reward for appointments, etc.**— A person who asks or receives, or agrees to receive, any gratuity or reward, or any promise thereof, for appointing another person, or procuring for another person an appointment, to a public office or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

Gray v. Hook, 4 N. Y. 449; Tappan v. Brown, 9 Wend. 175.

§ 54. **Selling right to official powers.**— A public officer who, for any reward, consideration or gratuity, paid or agreed to be paid, directly or indirectly, grants to another the right or authority to discharge any functions of his office, or permits another to make appointments or perform any of its duties, is guilty of a misdemeanor, and a conviction for the same forfeits his office and disqualifies him forever from holding any office whatever under this state.

See cases cited under § 52, *ante*.

§ 55. **Appointment avoided by conviction.**— A grant, appointment, or deputation, made contrary to the provisions of either of the last two sections, is avoided and annulled by a conviction for the violation of either of those sections, in respect to such grant, appointment, or deputation; but any official act done before conviction, is unaffected by the conviction.

§ 56. **Intrusion into public office.**— A person who willfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, willfully exercises any of the functions of his office, after his right to do so has ceased, is guilty of a misdemeanor.

See § 1498 of Code of Civ. Pro.

§ 57. **Officer refusing to surrender to successor.**—A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

People, etc. v. Stevens, 5 Hill, 616; *In re* Bartlett, 9 How. Pr. 414; Cobee v. Davis, 8 id. 367; People, etc. v. Dikeman, 7 id. 124; Welch v. Cook, id. 173–282; Conover's case, 5 Abb. 73; Devlin's case, id. 281; Matter of Whiting, 2 Barb. 513; Matter of Baker, 11 How. 418; Matter of Davis, 19 id. 323.

§ 58. **Administrative officers.**—The various provisions of this chapter which relate to executive officers apply to administrative officers, in the same manner as if administrative and executive officers were both mentioned.

TITLE VII.

Of Crimes against the Legislative Power.

SEC. 59. Preventing the meeting or organization of either branch of the legislature.
60. Disturbing the legislature while in session.
61. Compelling adjournment.
62. Intimidating a member of the legislature.
63. Compelling either house to perform or omit any official act.
64. Altering draft of bill.
65. Altering engrossed copy.
66. Bribery of members of legislature.
67. Receiving bribes by members of legislature.
68. Witnesses refusing to attend before the legislature or legislative committees.
69. Refusing to testify.
70. Members of the legislature liable to forfeiture of office.

§ 59. **Preventing meeting or organization of legislature.**—A person who willfully and by force or fraud prevents the legislature of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in a state prison not less than five years nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both.

§ 60. **Disturbing legislature while in session.**—A person who willfully disturbs the legislature of this state, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 61. **Compelling adjournment.**—A person who willfully and by force or fraud compels or attempts to compel the legislature of this state, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both.

§ 62. **Intimidating a member of the legislature.** — A person who willfully, by intimidation or otherwise, prevents any member of the legislature of this state, from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

See §§ 46, 127.

§ 63. **Compelling either house to perform or omit any official act.**— A person who willfully compels or attempts to compel either of the houses composing the legislature of this state to pass, amend, or reject any bill, or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in a state prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both.

§ 64. **Altering draft of bill.** — A person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

§ 65. **Altering engrossed copy.** — A person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of felony.

§ 66. **Bribery of members of the legislature.** — A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or other corrupt means, to influence a member to give or withhold his vote, or to absent himself from the house of which he is a member, or from any committee thereof, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

State v. Ellis, 4 Vroom, 102; Sulston v. Norton, 3 Burr. 1235; §§ 1, 2, 3, art. 15 of N. Y. State Const.; People v. Sharp, 107 N. Y. 427, 439; 1 Am. Rep. 851.

§ 67. **Receiving bribes by members of legislature.** — A member of either of the houses composing the legislature of this state, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

Marshall v. Balt. & O. R. Co., 16 How. (U. S.) 314; Fuller v. Dame, 18 Pick. 470; Hatzfield v. Gulden, 7 Watts, 152; Clippinger v. Hepbaugh, 5 Watts & S. 315; Wood v. McCan, 6 Dana, 366; Hunt v. Test, 8 Ala. 719; Com. v. Callaghan, 2 Va. Cas. 460; Walsh v. People, 68 Ill. 58; Sulston v. Norton, 3 Burr. 1235.

§ 68. **Witnesses refusing to attend before the legislature or its committees.** — A person who, being duly summoned to attend as a witness before either house of the legislature or any committee thereof, authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

Kilburn v. Thompson, 103 U. S. 168; Wilckens v. Willet, 1 Keyes, 521, 525; 4 Abb. App. Dec. 596; People v. Learned, 5 Hun, 626; People, *ex rel.* McDonald, v. Keeler, 99 N. Y. 463; People v. Sharp, 107 id. 427, 446; Matter of Dalton, 7 Cr. L. M. 601, 607, note.

§ 69. **Id.; refusing to testify.** — A person who being present before either house of the legislature or any committee thereof author-

ized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

See cases cited under § 68, *ante*; People, *ex rel.* Sabold, v. Webb, 23 N. Y. State Rep'r, 324; 5 N. Y. Supp. 855.

§ 70. **Members of the legislature to forfeit office.**— The conviction of a member of the legislature of either of the crimes defined in this chapter, involves as a consequence in addition to the punishment prescribed by this Code, a forfeiture of his office; and disqualifies him from ever afterwards holding any office under this state.

TITLE VIII.

Of Crimes against Public Justice.

CHAP. I. Bribery and corruption.
II. Rescues.
III. Escapes and aiding therein.
IV. Forging, stealing, mutilating and falsifying judicial and public records and documents.
V. Perjury and subornation of perjury.
VI. Falsifying evidence.
VII. Other offenses against public justice
VIII. Conspiracy.

CHAPTER I.

BRIBERY AND CORRUPTION.

SEC. 71. Bribery of a judicial officer.
72. Officer accepting bribe.
73. Juror, etc., promising verdict.
74. Juror, etc., accepting bribes.
75. Embracery.
76. Misconduct of officers at drawing of jurors.
77. Misconduct of officer having charge of juries.
78. Bribing public officers.
79. Offender a competent witness, etc.
80. Bribery of witnesses.
81. Definition of "jurors."

§ 71. **Bribery of a judicial officer.**— A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a judicial officer, juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereupon, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

State v. Ellis, 4 Vroom, 102; Klugman's case, 49 How. 484; State v. Carpenter, 20 Vt. 9; People v. Jaehne, 103 N. Y. 182, 190; People v. Sharp, 107 Id. 427, 439; People v. Ah Fook, 62 Cal. 493.

§ 72. **Officer accepting bribe.**—A judicial officer, a person who executes any of the functions of a public office not designated in Titles VI and VII of this Code, or a person employed by or acting for the state, or for any public officer in the business of the state, who asks, receives, or agrees to receive a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, judgment, action, decision, or other official proceeding, shall be influenced thereby, or that he will do or omit any act or proceeding, or in any way neglect or violate any official duty, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both. A conviction also forfeits any office held by the offender, and forever disqualifies him from holding any public office under the state.

People v. Jaehne, 103 N. Y. 182; 4 N. Y. Cr. 478; Jaehne v. People, 128 U. S. 189; 6 N. Y. Cr. 237, 239; People v. O'Neil, 109 N. Y. 251; 5 N. Y. Cr. 302; 48 Hun, 36; People v. Sharp, 107 N. Y. 427, 439; People v. Richmond, 5 N. Y. Cr. 97.

§ 73. **Juror, arbitrator, or referee, promising verdict, etc.**—A juror, or a person drawn or summoned to attend as a juror, or a person chosen arbitrator, or appointed referee, who either,

1. Makes any promise or agreement to give a verdict, judgment, report, award, or decision, for or against any party; or
2. Willfully receives any communication, book, paper instrument, or information, relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of that cause or matter;

Is guilty of a misdemeanor.

People, *ex rel.* Munsell, v. Ct. O. & T., 101 N. Y. 245; 4 N. Y. Cr. 70, aff'g 36 Hun, 277; 3 N. Y. Cr. 209.

§ 74. **Juror, etc., accepting bribes.**—A juror, referee, arbitrator, appraiser, or assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy, or proceeding, who asks, receives, or agrees to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment or decision, shall be influenced thereby, is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both.

See § 1193 of Code of Civ. Proc.; People v. Sharp, 107 N. Y. 427, 439; 12 N. Y. State Rep'r, 20.

§ 75. **Embracery.**—A person who influences or attempts to influence improperly, a juror in a civil or criminal action or proceeding, or one drawn or summoned to attend as such a juror, or one chosen an arbitrator, or appointed a referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending, or about to be brought before him, in any case, or in any manner not included in the last two sections, is guilty of a misdemeanor.

When guilty of contempt. Bergh's case, 16 Abb. Pr. (N. S.) 266; Klugman's case, 49 How. Pr. 484; Gibbs v. Dewey, 5 Cow. 503; People v. Sellick, 4 N. Y. Cr. 329; Turner v. Beardsley, 19 Wend. 348 State v. Sales, 2 Nev. 269.
See § 1122 of Code of Civ. Proc.

§ 76. **Misconduct of officers at drawing of jurors.**—A person authorized by law to assist at the drawing or impaneling of grand or trial jurors to attend a court, or a term of a court, or to try any cause or issue, who either

1. Designedly puts, or consents to the putting, upon a list of jurors as having been drawn, any name which was not lawfully drawn for that purpose; or
2. Designedly omits to place on such a list any name which was lawfully drawn; or
3. Designedly signs or certifies a list of such jurors as having been drawn which was not lawfully drawn; or
4. Designedly withdraws from the box, or other receptacle for the ballots containing the names of such jurors, any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omits to place in such box or receptacle any name lawfully drawn or designated, or places in such box or receptacle a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or
5. In the drawing of such jurors, does any act which is unfair, partial, or improper in any other respect;

Is guilty of a misdemeanor.

But this section shall not apply to the city and county of New York or the county of Kings.

See § 1122 of Code of Civ. Proc.

§ 77. **Misconduct of officer having charge of juries.**—An officer to whose charge any juror is committed by a court or magistrate, who negligently or willfully permits them, or any of them, without leave of the court or magistrate.

1. To receive any communication from any person;
2. To make any communication to any person;
3. To obtain or receive any book or paper, or refreshment; or,
4. To leave the jury room.

Is guilty of a misdemeanor.

§ 78. **Bribing public officers.**—A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a person executing any of the functions of a public officer, other than one of the officers or persons designated in Title VI, Title VII, and section 71 of Title VIII of this Code, with intent to influence him in respect to any act, decision, vote, or other proceeding, in the exercise of his powers or functions, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both.

See § 418, *post*.

People v. Sharp, 107 N. Y. 427; People v. Jaehne, 108 id. 191; People v. Richmond, 5 N. Y. Cr. 97.

§ 79. **Offender a competent witness, and to escape prosecution.**—A person offending against any provision of any foregoing sections of this Code relating to bribery is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the testimony so given

shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

See § 712, *post*.
People v. Sharp, 107 N. Y. 427.

§ 80. **Bribery of witnesses.**—A person who is, or is about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized to hear evidence or take testimony, who receives, or agrees or offers to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, is guilty of a felony.

See § 113, *post*.

§ 81. **Definition of "jurors."** — The word "juror" as used in this chapter includes a talesman, and extends to jurors in all courts whether of record or not of record, and in special proceedings, and before any officer authorized to impanel a jury in any case or proceeding.

CHAPTER II.

RESCUES.

SEC. 82. Rescue of prisoner.
83. Taking, etc., property in officer's custody.

§ 82. **Rescue of prisoner.** — A person who, by force or fraud, rescues a prisoner from lawful custody, or from an officer or other person having him in lawful custody, is guilty of a felony, if the prisoner was held upon a charge, commitment, arrest, conviction, or sentence of felony; and if the prisoner was held upon a charge, arrest, commitment, conviction, or sentence for misdemeanor, the rescuer is guilty of a misdemeanor.

People v. Washburn, 10 Johns. 160; People v. Tompkins, 9 id. 70; People v. Rathbun, 21 Wend. 508; People v. Rose, 12 Johns. 339; State v. Murray, 15 Me. 100; Commonwealth v. Filburn, 119 Mass. 297.
See subd. 4, § 14, and § 587 of Code of Civil Proc.

§ 83. **Taking, etc., property in officer's custody.**—A person who takes from the custody of an officer or other person, personal property, in charge of the latter, under any process of law, or who willfully injures or destroys such property, is guilty of a misdemeanor.

See subd. 4, § 14, and § 587 of Code of Civil Proc.

CHAPTER III.

ESCAPES, AND AIDING THEREIN.

SEC. 84. Escaping prisoner may be recaptured.
85. Prisoner escaping.
86. Attempt to escape from state prison.

Sec. 85. Aiding escape.
86. [illegible]
87. [illegible] escape.
88. [illegible]
89. [illegible] prisoner.
90. [illegible]
91. [illegible] of prisoner.

§ 84. **Escaping prisoner may be recaptured.**—A prisoner, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

Code Cr. Proc. § 94; Haggerty v. People, 53 N. Y. 475; S. C., 5 Lans. 332; Nall v. State, 34 Ala. 262; Ruby v. State, 35 Ohio 47; Freeze v. Wood, 7 Bosw. 566, 569; People v. Dean, 3 Johns. 447; Matter of Edwards, 35 Alb. L. J. 65; People v. Potter, 1 Park. 6.

§ 85. **Prisoner escaping.**—A prisoner who, being confined in a prison, or being in lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of felony if such custody or confinement is upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor if such custody or confinement is upon a charge, arrest, commitment or conviction for a misdemeanor.

People v. Duell, 2 Johns. 449. Escaped prisoner cannot take any action before court. People v. Genet, 59 N. Y. 80; 97 Mass. 545; 17 Q. B. 543; 14 Gratt. 677; 39 Id. 716; 31 Me. 562; Matter of O'Byrne, 55 How. 428; 22 N. Y. State Rep'r. 116; McMonagle v. Conkey, 14 Hun, 326; Keenan v. O'Brien, 53 Ill. 39; Smith v. United States, 94 U. S. 97; M'Donald v. People, 104 Ill. 291; 44 Am. Rep. 87; People v. Rettinger, 55 Cal. 290; 39 Am. Rep. 32; Sargent v. State, 96 Ind. 93; Warwick v. State, 73 Ala. 485; Wilson v. Com., 10 Bush, 536; 19 Am. Rep. 76.

See, also, People v. Johnson, 140 N. Y. 141; 46 Hun, 667; People v. Sharkey, 1 id. 390; State v. Davis, 14 Nev. 439.

§ 86. **Attempt to escape from state prison.**—A prisoner confined in a state prison for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

§ 87. **Aiding prisoner to escape.**—A person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison, or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon, or other thing, is guilty of felony, if the prisoner is held upon a charge, arrest, commitment, or conviction for a felony; and of a misdemeanor, if the prisoner is held upon a charge, arrest, commitment, or conviction for a misdemeanor.

People v. Rose, 12 Johns. 339; People v. Tompkins, 9 id. 70.

§ 88. **Aiding prisoner to escape.**—A person who aids or assists a prisoner in escaping, or attempting to escape, from the lawful custody of a sheriff, or other officer or person, is guilty of a misdemeanor, if the prisoner is held under arrest, commitment, or conviction for a misdemeanor, or upon a charge thereof; and of a felony if the prisoner is held under an arrest, commitment, or conviction for a felony, or upon a charge thereof.

People v. Tompkins, 9 Johns. 70; People v. Rose, 12 id. 339; People v. Washburn, 10 id. 160; Holland v. State, 60 Miss. 989.

§ 89. **Officer suffering escape.** — A sheriff, or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding, civil or criminal, or in any prison under his charge or control, to escape or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned, or contributed to, or assisted, is

1. If he corruptly and willfully allows, connives at, or assists the escape, guilty of a felony;
2. In any other case, is guilty of a misdemeanor.

See §§ 58, *supra*, 114, 115, *post;* State v. Erickson, 32 N. J. 421. What amounts to an escape from civil process. Stone v. Woods, 5 Johns. 182; Olmstead v. Raymond, 6 id. 62; Kellogg v. Gilbert, 10 id. 220; Lovell v. Orser, 1 Bosw. 349; Littlefield v. Brown, 1 Wend. 398.

§ 90. **Id.; forfeits office.** — An officer who is convicted of the offense specified in the first subdivision of the last section, forfeits his office, and is forever disqualified, to hold any office, or place of trust, honor or profit, under the constitution or laws of this state.

§ 91. **Concealing escaped prisoner.** — A person who knowingly or willfully conceals, or harbors for the purpose of concealment, a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor.

§ 92. **Definition of prison** — The term "prison," as used in this chapter, means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest.

People v. Johnson, 46 Hun, 671; 27 W. Dig. 519; aff'd, 110 N. Y. 134; State v. Beebe, 13 Kans. 589; Com. v. Felburn, 119 Mass. 297.

§ 93. **Definition of prisoner.** — The term, "prisoner," as used in this chapter, means any person held in custody under process of law, or under lawful arrest.

CHAPTER IV.

FORGING, STEALING, MUTILATING AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

SEC. 94. Injury, etc., to public record.
95. Offering false or forged instruments to be filed or recorded.

§ 94. **Injury, etc., to public record.** — A person who, willfully and unlawfully removes, mutilates, destroys, conceals, or obliterates a record, map, book, paper, document, or other thing, filed or deposited in a public office or with any public officer by authority of law, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both.

See §§ 114, 649, *post;* People v. Wise, 2 How. (N. S.) 92; 3 N. Y. Cr. 308; Ayres v. Covill, 18 Barb. 263.

§ 95. **Offering false or forged instruments to be filed or recorded.** — A person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office

within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

SEC. 96. Perjury.
97. Irregularities in the mode of administering oaths.
98. Incompetency of witness no defense for perjury.
99. Witness's knowledge of materiality of his testimony not necessary.
100. Making of deposition, etc., when deemed complete.
101. Statement of that which one does not know to be true.
102. Summary committal of witnesses who have committed perjury.
103. Witnesses necessary to prove the perjury, may be bound over to appear.
104. Documents necessary to prove such perjury may be detained.
105. Subornation of perjury defined.
106. Punishment of perjury and subornation.

§ **96. Perjury.** — A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed, is true, in an action, or a special proceeding, or upon any hearing, or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, willfully and knowingly testifies, declares, deposes, or certifies falsely, in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate, any material matter to be true which he knows to be false, is guilty of perjury.

See § 712, *post;* People v. Sweetman, 3 Park. 358; People v. McKinney, id. 510; People v. McGinnis, 1 id. 387; Chamberlain v. People, 23 N. Y. 85; People v. Evans, 40 id. 1; Weed v. People, 31 id. 465-467; Williams v. Com. (Pa.), 22 Alb. L. J. 418. Must be willful; advice of counsel. Elwell's case, 1 C. H. Rec. 95; Tuttle v. People, 36 N. Y. 431; Hood v. State, 44 Ala. 81. Must be before competent officer or tribunal and of a material fact. Harris v. People, 6 S. C. 206; Wood's case, 4 C. H. Rec. 130; People v. Tracy, 9 Wend. 265; People v. Townsend, 5 How. Pr. 315; Pendergrast's case, 3 C. H. Rec. 11; Geston v. People, 4 Lans. 487; Rouse v. Ross, 1 Wend. 475; People v. Travis, 4 Park. 213. See Van Steenburgh v. Kortz, 10 Johns. 167. False swearing on oath administered to voter by *de facto* inspectors, constitutes offense. People v. Cook, 8 N. Y. 67. Affidavit on information and belief, not perjury. Lambert v. People, 76 N. Y. 220. Swearing to belief, may be. People v. Robertson, 3 Wh. Cr. C. 180; Patrick v. Smoke, 3 Strobh. 147; Com. v. Dunham, Thach. C. C. 519; State v. Cruikshank, 6 Blackf. 62. Execution of deed. Tuttle v. People, *supra.* By bail. Tomlinson's case, 4 C. H. Rec. 125. Witnesses to prove. Johnson's case, 1 C. H. Rec. 21; Merritt's case, 4 id. 58; People v. Burden, 9 Barb. 467. Failure of case supported by perjury, no defense. Wood v. People, 59 N. Y. 117; S. C., 1 Hun, 381. Perjury before fire marshal. Harris v. People, 64 N. Y. 148. Verification of pleading. People v. Christopher, 4 Hun, 805. Proofs of marine loss. People v. Travis, 1 Sheld. 545. Before *de facto* officer. Lambert v. People, *supra.* Bank return. People v. Vail, 57 How. Pr. 81. See Commonwealth v. Pallard, 12 Metc. 225; State v. Simmons, 30 Vt. 620. Perjury by affidavit. People v. Sutherland, 81 N. Y. 1, rev'g 16 Hun, 192. Is also contempt. Eagan v. Lynch, 3 Bro. Civ. Pro. 236. Good faith. Dempsey v. People, 20 Hun, 261. Indictment. People v. Grimshaw, 2 N. Y. Cr. 390. See People v. Stone, id. 445; People v. Bowe, 34 Hun, 528; People v. Dishler, 38 Hun, 175; Case v. People, 76 N. Y. 242; 6 Abb. N. C. 152. Bragle v. People, 10 id. 300; Woods v. Ross, 28 Daily Reg. 265; People v. Courtney, 94 N. Y. 494; Byrnes v. Byrnes, 102 id. 4; 4 E. R. 601; People, *ex rel.* Ostrander, v. Chapin, 105 N. Y. 309, aff'g 7 N. Y. State Rep'r, 209; People v. Link, 6 N. Y. Cr. 185; 4 N. Y. Supp. 435; Nathans v. Hope,

100 N. Y. 615; 2 E. R. 655; United States v. Ambrose, 108 U. S. 336; O'Reilly v. People, 86 N. Y. 154; 40 Am. Rep. 525; People v. Clements, 107 N. Y. 205; 11 N. Y. State Rep'r, 384; People v. Thornton, 27 W. Dig. 559; Kane v. City of Brooklyn, 114 N. Y. 591.

§ 97. **Irregularities in the mode of administering oaths.**— It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner. The term "oath," includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

What is a valid oath. People v. O'Reilly, 86 N. Y. 154; Campbell v. People, 8 Wend. 636. When party does not appear before officer, no perjury. Case v. People, 76 N. Y. 242. See People v. Cook, 8 id. 67; State v. Moller, 1 Dev. 263; Montgomery v. State, 10 Ohio, 220; Van Steenburgh v. Kortz, 10 Johns. 167. See Ortner v. People, 6 Th. & C. 458; Fryatt v. Linde, 3 Edw. 239. See 18 Alb. L. J. 413; 25 id. 339; 26 id. 326; 29 id. 344; Matter of Carpenter, 64 Cal. 267.
See §§ 842-849 of Code of Civ. Proc.

§ 98. **Incompetency of witness no defense for perjury.**— It is no defense to a prosecution for perjury that the defendant was not competent to give the testimony, deposition or certificate of which falsehood is alleged. It is sufficient that he actually was permitted to give such testimony or make such deposition or certificate.

Chamberlain v. People, 23 N. Y. 85; People v. Bowe, 34 Hun, 528; 3 N. Y. Cr. 149.

§ 99. **Witness' knowledge of materiality of his testimony not necessary.**— It is no defense to a prosecution for perjury that the defendant did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have affected such proceeding.

Van Steenburgh v. Kortz, 10 Johns. 167; Rouse v. Ross, 1 Wend. 475; Wood v. People, 59 N. Y. 117; People v. Grimshaw, 20 W. Dig. 116; 2 N. Y. Cr. 390.
See cases cited under § 96, *ante*.

§ 100. **Making of deposition, etc., when deemed complete.**—The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the defendant to any other person with intent that it be uttered or published as true.

People v. O'Reilly, 86 N. Y. 154; People v. Allen, 9 N. Y. State Rep'r, 626; Kane v. City of Brooklyn, 114 N. Y. 591.

§ 101. **Statement of that which one does not know to be true.**— An unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false.

People v. McKinney, 3 Park. 510; Bennett v. Judson, 21 N. Y. 238; Com. v. Cornish, 6 Binn. 249; Steinman v. McWilliams, 6 Penn. St. 170; United States v. Shellmire, Baldw. 370; State v. Knox, Phil. N. C. 312; State v. Gates, 17 N. H. 373; People v. Dishler, 38 Hun, 176; 4 N. Y. Cr. 190.

§ 102. **Summary committal of witnesses who have committed perjury.**—Where it appears probable to a court of record that a person, who has testified before it in an action or proceeding in that court, has committed perjury in any testimony so given, the court may immediately commit him, by an order or process for that purpose, to prison, or take a recognizance, with sureties, for his appearing and answering to an indictment for perjury.

Lindsay v. People, 67 Barb. 548.

§ 103. **Witnesses to perjury, may be bound over to appear.**—In a case specified in the last section, the court may bind over witnesses to establish the perjury, to appear at the proper court to testify before a grand jury, and also upon the trial, in case an indictment is found for the perjury. It must cause immediate notice of any such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.

§ 104. **Documents necessary to prove perjury may be detained.**—In such a case, if a paper or document, produced by either party, is deemed by the court necessary to be used in the prosecution for the perjury, the court may detain the same, and direct it to be delivered to the district attorney.

§ 105. **Subornation of perjury defined.**—A person, who willfully procures or induces another to commit perjury, is guilty of subornation of perjury.

Stratton v People, 81 N. Y. 629; 20 Hun, 288; *In re* Eldridge, 82 N. Y. 161; 9 W. Dig. 6; People v. Evans, 40 N. Y. 1.

§ 106. **Punishment of perjury and subornation.**—Perjury and subornation of perjury are each punishable as follows:

1. When the perjury is committed upon the trial of an indictment for felony, by imprisonment for a term not exceeding twenty years.
2. In any other case, by imprisonment for a term not exceeding ten years.

CHAPTER VI.

FALSIFYING EVIDENCE.

SEC. 107. Offering false evidence.
108. Deceiving a witness.
109. Preparing false evidence.
110. Destroying evidence.
111. Preventing or dissuading witnesses from attending.
112. Inducing another to commit perjury.
113. Bribing witnesses.

§ 107. **Using forged, etc., evidence.**—A person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, offers or procures to be offered in evidence or to be used on a motion, as genuine, a book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, is guilty of felony. [AMD. CH. 378 of 1890.]

§ 108. **Deceiving a witness.**—A person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, conducted by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

In re Eldridge, 82 N. Y. 161; 9 W. Dig. 6.

§ 109. **Forging evidence.** — A person who fraudulently makes or prepares any false record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced in evidence, or on a motion, as genuine, upon any trial, hearing, investigation, inquiry, or other proceeding, authorized by law, is guilty of a felony. [AMD. CH. 378 of 1890.]

§ 110. **Destroying evidence.**—A person who, knowing that a book, paper, record, instrument in writing, or other matter or thing, is or may be required in evidence, or on a motion, upon any trial, hearing, inquiry, investigation, or other proceeding, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor. [AMD. CH. 378 of 1890.]

Collyer v. Collyer, 50 Hun, 424; 21 N. Y. State Rep'r, 119.

§ 111. **Preventing or dissuading witnesses from attending.**—A person who willfully prevents or dissuades any person who has been duly summoned or subpœnaed as a witness from attending, pursuant to the summons or subpœna, is guilty of a misdemeanor.

Morse v. Grimke, 27 N. Y. State Rep'r, 266; 18 Civ. Proc. 40.

§ 112. **Inducing another to commit perjury.**—A person who without giving, offering or promising a bribe, incites or attempts to procure another to commit perjury, or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor.

Stratton v. People, 80 N. Y. 629. See cases cited under § 105, *ante*.

§ 113. **Bribing witnesses.** — A person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony.

See cases cited under § 80, *ante*.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

SEC. 114. Injury to records and misappropriation by ministerial officers.
115. Permitting escapes, and other unlawful acts, committed by ministerial officers.
116. Neglecting or refusing to execute process.
117. General provision as to neglect of public officers.
118. Delaying to take person arrested for crime before a magistrate
119. Making arrests, etc., without lawful authority.
120. Misconduct in executing search warrant.
121. Refusing to aid officer in making an arrest.
122. Refusing to make an arrest.
123. Resisting execution of process, aiding escapes, etc., in county which has been proclaimed in insurrection.
124. Resisting public officer in the discharge of his duty.
125. Compounding crimes.
126. Conviction of primary offender, etc.
127. Intimidating, etc., public officer.
128. Suppressing evidence.

Sec. 129. Buying lands in suit.
130. Buying pretended titles.
131. Mortgage of lands under adverse possession not prohibited.
132. Common barratry defined.
133. Declared a misdemeanor.
134. What proof is required.
135. Interest.
136. Buying demands for suit by an attorney.
137. Buying demands by a justice or constable, for suit before a justice.
138. Promising rewards for claims delivered for collection.
139. Forfeiture of office.
140. Receiving claims in what cases allowable.
141. Application of previous sections to persons prosecuting in person.
142. Witness' privilege restricted.
143. Criminal contempts.
144. Grand juror acting after challenge has been allowed.
145. Disclosure of depositions taken by a magistrate.
146. Disclosure of depositions returned by grand jury with presentment.
147. Racing near a court.
148. Misconduct by attorneys.
149. Permitting attorney's name to be used.
150. In what cases lawful.
151. Production of pretended heir.
152. Substituting one child for another.
153. Importing foreign convicts.
154. Omission of duty by public officer.
155. Punishment for commission of prohibited acts.
156. Disclosing fact of indictment having been found.
157. Grand juror disclosing what transpired before the grand jury.
158. Instituting suit in false name.
159. Maliciously procuring search warrant.
160. Unauthorized communications with convict in state prison.
161. Neglect to return names of constables.
162. Falsely certifying, etc., as to deeds.
163. Other false certificates.
164. Penalty for recording, etc., without acknowledgment.
165. False auditing and paying claims.
166. Id., conviction forfeits office.
167. Id., what constitutes conversion.

§ 114. Injury to records and misappropriation by ministerial officers. — A sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or,

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office,

Is guilty of felony.

See §§ 58, 94, *supra;* 470, 472, *post;* Ayres v. Covill, 18 Barb. 268.

§ 115. Permitting escapes, by ministerial officers. — A sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

2. Commits any unlawful act tending to hinder justice,

Is guilty of misdemeanor.

See §§ 58, 89, 90, *supra.*
Shattuck v. State, 51 Miss. 575; Blue v. Commonwealth, 4 Watts, 215.

§ 116. **Neglecting or refusing to execute process.** — An officer who, in violation of a duty imposed upon him by law to receive a person into his official custody, or into a prison under his charge, willfully neglects or refuses so to do, is guilty of a misdemeanor.

See § 154, *post*.
Smith v. Botens, 36 N. Y. State Rep'r, 55.

§ 117. **Neglect of public officers.** — A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who willfully neglects to perform the duty, is guilty of a misdemeanor. This and the preceding section do not apply to cases of official acts or omissions the prevention or punishment of which is otherwise specially provided by statute.

See §§ 154, 471, 684, *post*.
People v. Norton, 7 Barb. 477; Clark v. Miller, 47 id. 38; People v. Martin, 43 How. 52, 54; People v. Cook, 8 N. Y. 67, 84; People v. Brooks, 1 Den. 459; People v. Bedell, 2 Hill, 196; Williams v. People, 15 W. Dig. 317; People v. Common Council, 16 Abb. N. C. 114; 2 How. (N. S.) 68; Smith v. Botens, 36 N. Y. State Rep'r, 55; People v. Meakim, 40 id. 688.

§ 118. **Delaying to take person arrested before a magistrate.** A public officer or other person having arrested any person upon a criminal charge, who willfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

See § 556, *post*; Code Cr. Proc., § 165.

§ 119. **Making arrests, etc., without lawful authority.** — No sheriff of a county, mayor of a city, or officials, or person authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corporation, or otherwise, appoint as such special deputy, special constable, marshal, policeman, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policemen, or other peace officer, without having first received his appointment in writing from the authority lawfully appointing him. Any person or persons who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to any one as a deputy sheriff, marshal, or policeman, constable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without a regular process therefor, or any person who knowingly violates any other provision of this section, is guilty of a misdemeanor. But nothing herein contained shall be deemed to affect, repeal or abridge the powers authorized to be exercised under sections one hundred and two, one hundred and four, one hundred and sixty-nine, one

hundred and eighty-three, eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven of the Code of Criminal Procedure; or under chapter three hundred and forty-six of the laws of eighteen hundred and sixty-three, as amended by chapter two hundred and fifty-nine of the laws of eighteen hundred and sixty-six, and chapter one hundred and ninety-three, of the laws of eighteen hundred and seventy-five; or under chapter two hundred and twenty-three of the laws of eighteen hundred and eighty; or under chapter five hundred and twenty-seven of the laws of eighteen hundred and seventy-three; or under chapter two hundred and five of the laws of eighteen hundred and seventy-five; but all places kept for summer resorts and the grounds of racing associations in the counties of New York, Kings and Westchester, are hereby exempted from the provisions of this act. [AMD. CH. 272 of 1892. In effect Apr. 9, 1892.]

See § 556, *post;* § 183, Code of Crim. Proc.

§ 120. **Misconduct in executing search warrant.**—An officer, who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

See §§ 159, 556, *post;* Bell v. Clapp, 10 Johns. 263.

§ 121. **Refusing to aid officer in making arrest.**— A person, who, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer is guilty of a misdemeanor.

§ 122. **Refusing to make an arrest.**— A person, who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

§ 123. **Resisting execution of process, etc.**— A person, who, after proclamation issued by the governor declaring a county to be in a state of insurrection, resists or aids in resisting the execution of process in such county, or who aids or attempts the rescue or escape of another from lawful custody or confinement in such county, or who resists or aids in resisting a force ordered out by the governor to quell or suppress an insurrection, is guilty of a felony.

§ 124. **Resisting public officer.** — A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays, or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor.

See § 47, *supra.*

§ 125. **Compounding crimes.** — A person who takes money, or other property, gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal a crime, or a violation of statute, or to abstain from, discontinue, or delay, a prosecution therefor, or to withhold any evidence thereof, except in a case where a compromise is allowed by law, is guilty:

1. Of a felony, punishable by imprisonment in a state prison, for not more than five years, where the agreement or understanding relates to a felony punishable by death, or by imprisonment in a state prison for life;

2. Of a felony, punishable by imprisonment in a state prison for not more than three years, where the agreement or understanding relates to another felony;

3. Of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or by fine of not more than two hundred and fifty dollars, or both, where the agreement or understanding relates to a misdemeanor, or to a violation of a statute for which a pecuniary penalty or forfeiture is prescribed.

Felony. Conderman v. Trenchard, 58 Barb. 168; Dalmouth v. Bennett, 15 id. 541; Conderman v. Hicks, 3 Lans. 108; Kissock v. House, 28 Hun, 35; Bothwell v. Brown, 51 Ill. 234; Hinesburg v. Sumner, 9 Vt. 23; Com. v. Pease, 16 Mass. 91; Bell v. Wood, 1 Bay, 244; Plumer v. Smith, 5 N. H. 553.

Misdemeanors. Maurer v. Mitchell, 9 Watts & S. 69; Price v. Summers, 2 Southard, 578; Robinson v. Crenshaw, 2 Stew. & P. 276; Holcomb v. Stimpson, 8 Vt. 141; People v. Bishop, 5 Wend. 111; Pearce v. Wilson, 111 Penn. St. 14; Jones v. Rice, 18 Pick. 440; McMahon v. Smith, 47 Conn. 221; Bowen v. Buck, 26 Vt. 308; Shaw v. Reed, 30 Me. 105; Shaw v. Spooner, 9 N. H. 197; Clark v. Ricker, 14 id. 44.

§ 126. **Conviction of primary offender, etc.**— Upon the trial of an indictment for compounding a crime, it is not necessary to prove that any person has been convicted of the crime or violation of statute, in relation to which an agreement or understanding herein prohibited was made.

See § 32, *supra*. People v. Buckland, 13 Wend. 592.

§ 127. **Intimidating public officer.**— A person who directly or indirectly addresses any threat or intimidation to a public officer, or to a juror, referee, arbitrator, appraiser, or assessor, or to any other person, authorized by law to hear and determine any controversy or matter, with intent to induce him, contrary to his duty, to do or make, or to omit or delay, any act, decision or determination, is guilty of a misdemeanor.

See §§ 61, 62, 63, *supra*; § 464, *post*. Smith v. Botens, 36 N. Y. State Rep'r, 55; Matter of Tyler, 71 Cal. 351.

§ 128. **Suppressing evidence.**— A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein, any book, paper, or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper, or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

See §§ 110, 111, *ante*.

§ 129. **Buying lands in suit.**— A person who takes a conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing

the pendency of such suit and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.

Hendricks v. Andrews, 7 Wend. 152; Bryant v. Ketchum, 8 Johns. 479; Clowes v. Hawley, 12 id. 484; Hoyt v. Thompson, 5 N. Y. 320, 346; Pepper v. Haight, 20 Barb. 429; Small v. Mott, 22 Wend. 403; 20 id. 212; Etheridge v. Cromwell, 8 id. 629; Preston v. Hunt, 7 id. 54; Varick v. Johnson, 2 id. 166; Tomb v. Sherwood, 13 Johns. 289; Hassenfrats v. Kelley, id. 467; Webb v. Bindon, 21 Wend. 98; Thallhimer v. Brinckerhoff, 3 Cow. 624; Danziger v. Boyd, 120 N. Y. 629; 30 N. Y. State Rep'r, 893; Chamberlain v. Taylor, 12 Abb. N. C. 473.

§ 130. **Buying or selling pretended titles.**—A person who buys or sells, or in any manner procures, or takes or makes any covenant or promise to convey any right, or title real or pretended, to any lands or tenements, unless the grantor thereof or the person making such covenant or promise has been in possession, or he and those by whom he claims, have been in possession of the same or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such covenant or promise made, is guilty of a misdemeanor.

Possession must be actual, not constructive. Dawley v. Brown, 79 N. Y. 390. Judicial sales. Tuttle v. Jackson, 6 Wend. 213; Truax v. Thorn, 2 Barb. 156; Webb v. Bindon, 21 Wend. 98. See Towle v. Smith, 2 Rob. 489; Mann v. Fairchild, 2 Keyes, 106; Vandyck v. Van Beuren, 1 Johns. 345; Witter v. Blodgett, 4 N. Y. Leg. Obs. 263; Sedgwick v. Stanton, 14 N. Y. 289; Durgin v. Ireland, id. 322; Preston v. Hunt, 7 Wend. 53; Hassenfrats v. Kelly, 13 Johns. 466; Etheridge v. Cromwell, 8 Wend. 629; Tomb v. Sherwood, 13 Johns. 289; Lane v. Shears, 1 Wend. 433; Allen v. Welch, 18 Hun, 226; Ten Eyck v. Craig, 5 Th. & C. 70; Pepper v. Haight, 20 Barb. 429.

See Danziger v. Boyd, 120 N. Y. 629; 30 N. Y. State Rep'r, 893; Chamberlain v. Taylor, 12 Abb. N. C. 473.

§ 131. **Mortgage, etc., not prohibited.**—The last two sections shall not be construed to prevent any person having a just title to lands in the adverse possession of another, from executing a mortgage upon such lands, nor shall said sections apply to any conveyance or release of lands or tenements to any person in the lawful possession thereof. [AMD. CH. 282 of 1888.]

§ 132. **Common barratry defined.**—Common barratry is the practice of exciting groundless judicial proceedings.

Barratry, what is? Com. v. Davis, 11 Pick. 432; Com. v. McCullock, 15 Mass. 227; Com. v. Mohn, 52 Penn. St. 243.

§ 133. **Id.; a misdemeanor.**—Common barratry is a misdemeanor.

§ 134. **Proof of common barratry.**—No person can be convicted of common barratry, except upon proof that he has excited actions or legal proceedings, in at least three instances, and with a corrupt or malicious intent to vex and annoy.

Voorhees v. Dorr, 51 Barb. 580.

§ 135. **Id.; party in interest.**—Upon a prosecution for common barratry, the fact that the defendant was himself a party in interest or upon the record to any action or legal proceeding complained of, is not a defense.

136. **Buying demands for suit by an attorney.**—An attorney or counselor who violates section 78 of the Code of Civil Procedure,

relating to buying demands, or section 74 of the Code of Civil Procedure relating to certain promises and gifts, is guilty of a misdemeanor.

Coughlin v. N. Y. C. R. R. Co., 71 N. Y. 443; People v. Walbridge, 3 Wend. 120. The intent must be shown. Williams v. Matthews, 3 Cow. 252. Advances by an attorney to a client made long after commencement of suit, and from motives of humanity are not within the statute. Bristol v. Dann, 11 Wend. 142. The illegal intent must be proved. The statute extended to suits in equity, but foreclosure by advertisement is not a suit. Hall v. Bartlett, 9 Barb. 297; Mann v. Fairchild, 2 Keyes, 106, 115; S. C., 14 Barb. 548; Baldwin v. Latson, 2 Barb. Ch. 306; Warren v. Helmer, 8 How. 419. But see Hall v. Gird, 7 Hill, 586. The statute was not intended to prevent a purchase for an honest purpose of protecting some other important right of the assignee. Baldwin v. Latson, 2 Barb. Ch. 306. *What is and what is not forbidden.* Does not forbid buying a judgment for the purpose of collecting it by execution. Warner v. Payne, 3 Barb. Ch. 630; Brotherson v. Consalus, 26 How. 213. Nor to justices' courts. Goodell v. People, 5 Park. 206. But buying with an intent to sue though only in a certain contingency violates the statute. Moses v. McDivitt, 2 Abb. N. C. 47. Brooklyn City Court. The statute covers purchases made at judicial sales had under direction of an officer of the court. Mann v. Fairchild, *supra*; Hall v. Gird, 7 Hill, 586; Arden v. Patterson, 5 Johns. Ch. 44; Barry v. Whitney, 3 Sandf. 696; Wood v. Perry *et al.*, 1 Barb. 114; Voorhees v. Dorr, 51 Barb. 567; Ramsey v. Gould, 57 id. 398. See further, West v. Kurtz, 19 N. Y. State Rep'r, 803; 15 Civ. Pro. 426; "The Carl Jackson," 4 id. 414, *note*; Hoag v. Weston, 10 id. 95; 1 N. Y. State Rep'r, 585; Moses v. McDivitt, 88 N. Y. 62; Ely v. Cooke, 2 Abb. App. Dec. 14; Marsh v. Holbrook, 3 id. 176; Stephens v. Humphreys, 39 N. Y. State Rep'r, 134; Browning v. Marvin, 100 N. Y. 144; Wetmore v. Hegeman, 88 id. 73; Olshei v. Lazzarone, 40 N. Y. State Rep'r, 660.

§ 137. **Buying demands by a justice or constable.**—A justice of the peace or a constable who, directly or indirectly, buys or is interested in buying anything in action, for the purpose of commencing a suit thereon before a justice, is guilty of a misdemeanor.

Goodell v. People, 5 Park. 206, 207.

§ 138. **Promising rewards for claims delivered for collection.**—A justice of the peace or constable, who directly or indirectly, gives, or promises to give, any valuable consideration to any person as an inducement to bring, or in consideration of having brought, a suit thereon before a justice, is guilty of a misdemeanor.

§ 139. **Forfeiture of office.**—A person convicted of a violation of any of the three preceding sections, in addition to the punishment, by fine and imprisonment, prescribed therefor by this Code, forfeits his office.

§ 140. **Receiving claims, in what cases allowable.**—Nothing in the four preceding sections shall be construed to prohibit the receiving in payment of anything in action for any estate, real or personal, or for any service of an attorney or counselor actually rendered, or for a debt antecedently contracted; or the buying or receiving of anything in action for the purpose of remittance, and without any intent to violate the preceding sections.

Goodell v. People, 5 Park. 206; People v. Walbridge, 3 Wend. 120; Hall v. Bartlett, 9 Barb. 297; Mann v. Fairchild, 2 Keyes, 106; Watson v. McLaren, 19 Wend. 557; Baldwin v. Latson, 2 Barb. Ch. 306; Warner v. Paine, 3 id. 630; Brotherson v. Consalus, 26 How. 213; Ramsey v. Erie R. Co., 8 Abb. (N. S.) 17; Van Rensselaer v. Sheriff, etc., 1 Cow. 443; Coughlin v. R. Co., 71 N. Y. 433; Ely v. Cooke, 2 Abb. App. Dec. 14; Marsh v. Holbrook, 3 id. 176; Moses v. McDivitt, 88 N. Y. 62.

§ 141. **Prosecuting in person.**— The provisions of sections 136, 138 and 140, relative to the buying of claims by an attorney, counselor, justice of the peace or constable, with intent to prosecute them, or to the lending or advancing of money by an attorney or counselor in consideration of a claim being delivered for collection, apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting in person an action or legal proceeding.

§ 142. **Witness' privilege restricted.**— No person shall be excused from testifying, in any civil action or legal proceeding, to any facts showing that a thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon a criminal prosecution.

See § 712, *post*.

§ 143. **Criminal contempts.**— A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character, committed in the presence of a referee or referees, while actually engaged in a trial or hearing, pursuant to the order of the court, or in the presence of a jury, while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law;

3. Breach of the peace, noise, or other disturbance, directly tending to interrupt the proceedings of a court, jury, or referee;

4. Willful disobedience to the lawful process or other mandate of a court;

5. Resistance willfully offered to its lawful process or other mandate;

6. Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory;

7. Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished as provided in this section, for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court.

See §§ 247, 680, 681, *post*. People v. Compton *et al.*, 1 Duer, 512; *In re* John Percy, 2 Daly, 530; Weeks v. Smith, 3 Abb. Pr. 211; Loop v. Gould, 17 Hun, 585. Before justice of peace. Rutherford v. Holmes, 5 Hun, 317; S. C., 66 N. Y. 368; People v. Webster, 3 Park. 503. Rights of accused. People v. Porter, 25 Hun, 601. Communication of grand jury. Bergh's case, 16 Abb. Pr. (N. S.) 266. See Bernard v. Leo, 7 Da. Reg. 1069, 1213; People v. Dwyer, 90 N. Y. 402; People v. Gilmore, 26 Hun, 1; People v. Aitken, 19 Hun, 327. Legislative contempts. People, *ex rel.* McDonald, v. Keeler, 32 Hun, 563; People v. Learned, 5 Hun, 626; People, *ex rel.* Rosevelt, v. Edson, 51 N. Y. Super. 238.

First Subd. Matter of Hackley, 24 N. Y. 74; Matter of Griffin, 15 N. Y. State Rep'r, 400; 1 N. Y. Supp. 7; Bergh's case, 16 Abb. (N. S.) 266; Matter of Watson, 3 Lans. 408; Matter of Percy, 2 Daly, 530; Hill v. Crandall, 52 Ill. 70; Baker v. State, 82 Ga. 776; 14 Am. St. Rep. 192; Watson v. People, 11 Colo. 4; State v. Frew, 24 W. Va. 416; 49 Am. Rep. 257; Matter of Terry, 128 U. S. 289; Matter of Choate, 56 Hun, 356; 30 N. Y. State Rep'r, 728; aff'd, 121 N. Y. 678; Matter of Savin, 131 U. S. 267; Cuddy's case, id. 33; Klugman's case, 49 How. 484.

Third Subd. Matter of Terry, 128 U. S. 289.

Fourth Subd. Sherwin v. People, 100 N. Y. 351; 2 E. R. 904; 3 N. Y. Cr. 524; People, *ex rel.* Sherwin, v. Mead, 91 N. Y. 415, aff'g 28 Hun, 227; Bowen v. Hunter, 45 How. 193; People v. Albany, etc., R. Co, 20 id. 358; aff'd, 24 N. Y. 261; People v. Heffernan, 38 How. 402; Weeks v. Smith, 3 Abb. 211; Loop v. Gould, 17 Hun, 585.

Sixth Subd. People v. Hovey, 29 Hun, 382; aff'd, 92 N. Y. 554; People v. Fancher, 2 Hun, 226; People, *ex rel.* Jones, v. Davidson, 35 id. 471; Clark v. Brooks, 26 How. 254; People, *ex rel.* Valiente, v. Dyckman, 24 id. 222; Clapp v. Lathrop, 23 id. 428; People v. Sharp, 45 Hun, 493; aff'd, 107 N. Y. 427.

Seventh Subd. Matter of Griffin, 15 N. Y. State Rep'r, 400; 1 N. Y. Supp. 7; Matter of Cheeseman, 49 N. J. L. 137; Cheadle v. State, 110 Ind. 301; 59 Am. Rep. 199.

See People, *ex rel.* Munsell, v. Oyer & T., 36 Hun, 277; aff'd, 101 N. Y. 245; King v. Flynn, 37 Hun, 335.

§ 144. **Grand juror acting after challenge has been allowed.**— A grand juror who, with knowledge that a challenge, interposed against him by a defendant, has been allowed, is present at or takes part or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

Code Cr. Proc., §§ 242, 243.

§ 145. **Disclosure of depositions.**— A magistrate or clerk of any magistrate who willfully permits any deposition taken on an examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk to be inspected by any person, except a judge of a court having jurisdiction of the offense, the attorney-general, the district attorney of the county and his assistants, the complainant and his counsel, and the defendant and his counsel, is guilty of a misdemeanor. [AMD. CH. 145 of 1888.]

Code Cr. Proc., § 206. Smith v. Botens, 36 N. Y. State Rep'r, 55.

§ 146. **Disclosure of depositions returned by grand jury.**— A clerk of any court who willfully permits any deposition returned by a grand jury and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk, and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

See § 206 of Code of Cr. Proc. Smith v. Botens, 36 N. Y. State Rep'r, 55.

§ 147. **Racing animals near a court.**— A person concerned in any racing, running, or other trial of speed between horses or other animals, within one mile of the place where a court is actually sitting, is guilty of a misdemeanor.

See Code Cr. Proc., § 57.

§ 148. **Misconduct by attorneys.**— An attorney or counselor who,

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party as prohibited by section 70 of the Code of Civil Procedure; or,

2. Willfully delays his client's suit with a view to his own gain; or, willfully receives any money or allowance for or on account of any money which he has not laid out, or become answerable for, as prohibited by section 71 of the Code of Civil Procedure,

Is guilty of a misdemeanor, and in addition to the punishment pre-

scribed therefor by this Code, he forfeits to the party injured treble damages, to be recovered in a civil action.

See §§ 136, 139, *supra;* §§ 670, 671, *post.* Private fraud by attorney, but not as an attorney, no offense. Niven's case, 5 C. H. Rec. 79; Quinn v. Lloyd, 36 How. Pr. 378; People v. Reavey, 38 Hun, 418; 39 id. 364; 4 N. Y. Cr. 1, 23; Looff v. Lawton, 14 Hun, 588; Smith v. Botens, 36 N. Y. State Rep'r, 55.

§ 149. **Permitting attorney's name to be used.**— If an attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

Process. York v. Peck, 31 Barb. 350.

§ 150. **Id.; in what cases lawful.**—Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney-general, or district attorney, or attorney of such public officer or board or corporation may permit any proceeding therein, to be taken in his name by an attorney to be chosen by the party in interest.

§ 151. **Production of pretended heir.** — A person who fraudulently produces an infant, falsely pretending it to have been born of a parent whose child is or would be entitled to inherit real property, or to receive a share of personal property, with intent to intercept the inheritance of such real property, or the distribution of such personal property, or to defraud any person out of the same, or any interest therein; or who, with intent fraudulently to obtain any property, falsely represents himself or another to be a person entitled to an interest or share in the estate of a deceased person, either as executor, administrator, husband, wife, heir, legatee, devisee, next of kin, or relative of such deceased person; is punishable by imprisonment in a state prison for not more than ten years.

People v. Cunningham, 3 Park. 520; reversed on other grounds in id. 581.

§ 152. **Substituting one child for another.** — A person, to whom a child has been confided for nursing, education, or any other purpose, who, with intent to deceive a parent, guardian or relative of the child, substitutes or produces to such parent, guardian or relative, another child or person, in place of the child so confided, is punishable by imprisonment in a state prison for not more than seven years.

§ 153. **Importing foreign convicts.** — An owner, master or commander of any vessel arriving from a foreign country, who knowingly lands or permits to land at any port, city, harbor, or place within this state, any passenger, seaman or other person who is a foreign convict of any crime which, if committed within this state, would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of a misdemeanor.

See § 440, *post;* Code Cr. Proc., § 674.

§ 154. Omission of duty by public officers. — Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding a public trust or employment, every willful omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

See §§ 116, 117, *supra;* 684, *post*. Trustee refusing to act. People v. Calhoun, 3 Wend. 421. Id. Perverting justice. People v. Coon, 15 Wend. 277. Refusing to act. People v. Brooks, 1 Den. 457. Perverting justice. People v. Bogart, 3 Park. 143; Gardner v. People, 3 Hun, 222; People v Norton, 7 Barb. 477; Clark v. Miller, 47 id. 38; Cunningham v. Bucklin, 8 Cow. 178; People v. Martin, 43 How. Pr. 52, 54; People v. Cook, 8 N. Y. 67, 84; People v. Bedell, 2 Hill, 196; Green v. Rumsey, 2 Wend. 611. See Gardner v. People, 3 Hun, 222; Conners v. Adams, 13 id. 427; People v. Stocking, 32 How. 49; 50 Barb. 573; *In re* Pickett, 55 How. 491; Bentley v. Phelps, 27 Barb. 524; People v. Ryall, 58 Hun, 235; 34 N. Y. State Rep'r, 204; People v. Long I. R. Co., 58 Hun, 414; 34 N. Y. State Rep'r, 716.

§ 155. Punishment for commission of prohibited acts.—Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.

See § 471, *post;* Foote v. People, 56 N. Y. 321; People v. Bogart, 3 Abb. 202; 3 Park. 143; Hodgman v. People, 4 Den. 235; *Ex parte* Pickett, 55 How. 491; Mayor, etc. v. Eisler, 2 Civ. Pro. 125; Foster v. Townshend, 12 Abb. (N. S.) 471.

§ 156. Disclosing fact of indictment having been found.—A judge, grand juror, district attorney, clerk, or other officer, who, except in the due discharge of his official duty, discloses, before an accused person is in custody, the fact of an indictment having been found or ordered against him, is guilty of a misdemeanor.

See Code Cr. Proc., § 56.

§ 157. Grand juror disclosing transactions of grand jury.—A grand juror who except when lawfully required by a court or officer willfully discloses, either

1. Any evidence adduced before the grand jury; or
2. Any thing which he himself or any other member of the grand jury said, or in what manner he or any other grand juror voted, upon any matter before them;

Is guilty of a misdemeanor.

Code Cr. Proc., §§ 265, 266; People v. Hulbut, 4 Den. 133, 135; Smith v. Botens, 36 N. Y. State Rep'r, 55.

§ 158. Instituting suit in name of another.—A person who institutes or prosecutes an action or other proceeding in the name of another without his consent and contrary to the statutes, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months.

See § 1900 of Code of Civ. Proc.

§ 159. Maliciously procuring search warrant.—A person who maliciously, and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

See § 120, *supra*. See Fourth Amendment to Federal Const.

§ 160. Unauthorized communication with convict in state prison.—A person who, not being authorized by law, or by a written

permission from an inspector, or by the consent of the warden, has any communication with a convict in a state prison, or brings into or conveys out of any state prison any letter or writing to or from a convict, is guilty of a misdemeanor.

See Code Cr. Proc., § 56.

§ 161. **Neglect to return names of constables.**—A town clerk who willfully omits to return to the county clerk the name of a person who has qualified as constable, pursuant to law, is punishable by a fine not exceeding ten dollars.

§ 162. **Falsely certifying, etc., as to record of deeds.**—An officer authorized by law to record a conveyance of real property, or of any other instrument, which by law may be recorded, who knowingly and falsely certifies that such a conveyance or instrument has been recorded, is guilty of a felony.

§ 163. **Other false certificates.**—A public officer who, being authorized by law to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not expressly provided by law, is guilty of a misdemeanor.

§ 164. **Recording, etc., without acknowledgment.** — A public officer authorized to file or record any instrument or conveyance of, or affecting property which is duly proved or acknowledged, who knowingly files or records any such instrument or conveyance which is not accompanied by a certificate, according to law, of the proof or acknowledgment, is guilty of a misdemeanor.

See People v. Brown, 7 Wend. 493.

§ 165. **False auditing and paying claims.**—A public officer, or a person holding or discharging the duties of any office or place of trust under the state, or in any county, town, city or village, a part of whose duties is to audit, allow or pay, or take part in auditing, allowing, or paying claims or demands upon the state, or such county, town, city or village, who knowingly audits, allows or pays, or directly or indirectly consents to, or in any way connives at the auditing, allowance or payment of any claim or demand, against the state, or such county, town, city or village, which is false or fraudulent, or contains charges, items or claims which are false or fraudulent, is guilty of felony, punishable by imprisonment for a term not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Corruptly auditing account. People v. Stocking, 50 Barb. 573. See Matter of Cortes, 136 U. S. 330.

See § 672, *post*.

§ 166. **Id., conviction forfeits office.**—A person who, being or acting as a public officer or otherwise, by willfully auditing, or paying, or consenting to, or conniving at the auditing or payment of a false or fraudulent claim or demand, or by any other means, wrongfully obtains, receives, converts, disposes of or pays out or aids, or abets another in obtaining, receiving, converting, disposing of, or

paying out any money or property, held, owned, or in the possession of the state, or of any city, county or village, or other public corporation, or any board, department, agency, trustee, agent or officer thereof, is guilty of a felony, punishable by imprisonment for not less than three nor more than five years, or by a fine not exceeding five times the amount or value of the money or the property converted, paid out, lost or disposed of by means of the act done or abetted by such person, or by both such imprisoment and fine. The amount of any such fine when paid or collected, shall be paid to the treasury of the corporation or body injured. A conviction under this section forfeits any office held by the offender, and renders him incapable thereafter of holding any office or place of trust.

See § 672, *post*.

§ **167. Id., what constitutes conversion.** — A transfer in whole or part of any deposit with any bank or other depositary, or of any credit, claim or demand upon such depositary, whereby the right, title or possession of the owner or holder of such deposit, or of any custodian thereof, is impaired or affected, is a conversion thereof under the last section.

CHAPTER VIII.

CONSPIRACY.

SEC. 168. Conspiracy defined.
169. Conspiracies against peace, etc.
170. No other conspiracies punishable.
171. Overt act, when necessary.

§ **168. Conspiracy defined.** — If two or more persons conspire, either

1. To commit a crime; or
2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or
3. Falsely to institute or maintain an action or special proceeding; or
4. To cheat and defraud another out of property, by any means which are in themselves criminal, or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or
5. To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use or employment hereof; or
6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws;

Each of them is guilty of a misdemeanor.

See §§ 170, 653, 673, *post*. Must be criminal intent. People v. Powell, 63 N. Y. 88; S. C., 5 Hun, 169. Conspiracy need not be consummated. Adams v. People, 9 Hun, 89. Conspiracy need not be overt act. People v. Mather, 4 Wend. 229; Com. v. Putnam, 29 Penn. St. 296; State v. Rickey, 4 Halst. 293; Alderman v. People, 4 Mich. 414; State v. Ripley, 31 Me. 386; Hazen v. Com., 23 Penn. St. 355;

Isaacs v. State, 48 Miss. 234. See State v. Norton, 3 Zabr. 33. Merged in felony. Com. v. Blackburn, 1 Duvall, 4; State v. Mayberry, 48 Me. 218. But not in misdemeanor. People v. Mather, *supra;* People v. Richards, 1 Mann (Mich.), 216; State v. Murray, 3 Shep. 100. But see Lambert v. People, 9 Cow. 577; Com. v. Kingsbury, 5 Mass. 106; Com. v. O'Brien, 12 Cush. 84; State v. Murphy, 4 Ala. 765; State v. Noyes, 25 Vt. 415; Taylor's case, 1 C. H. Rec. 192; Duprey's case, 4 id. 121; Robbins' case, id. 1; People v. Bradford, 1 Wh. C. C. 219; People v. Mosher, id. 240; People v. Trequin, id. 142; Roget's case, 2 C. H. Rec. 61; Lewin's case, 5 id. 129; McDermut's case, 4 id. 12; People v. Olcott, 2 Johns. Cas. 301. What is a conspiracy? State v. Mayberry, 48 Me. 218; Spies v. People, 122 Ill. 1; State v. Barnum, 15 N. H. 396; Com. v. Hunt, 4 Metc. 111; State v. Burnham, 15 N. H. 396; State v. Bartlett, 30 Me. 132; State v. Hewetts, 31 id. 396; Com. v. Ridgeway, 2 Ashm. 247. New party. People v. Mather, *supra.* Cornering market. M. R. C. Co. v. B. C. Co., 68 Penn. St. 173; People v. Melvin, 2 Wh. C. C. 262; People, *ex rel.* Lawrence, v. Brady, 56 N. Y. 183; People v. Fisher, 14 Wend. 9; Stanton v. Allen, 5 Den. 435, 443; Hooker v. Vandewater, 4 id. 349; Mott v. Small, 20 Wend. 212, 221. Assent. Lamb v. People (Ill.), 22 Alb. L. J. 418; Hope v. People, 9 W. Dig. 232.

Subd 3. People v. Chase *et al.*, 16 Barb. 495; People v. Flack, 125 N. Y. 327; 34 N. Y. State Rep'r, 728.

Subd. 4. March *et al.* v. People, 7 Barb. 391; People v. Olson, 39 N. Y. State Rep'r, 295.

Subd. 5. People v. Melvin, 2 Wh. C. C. 262; People v. Fisher, 14 Wend. 9; Emmanuel's case, 6 C. H. Rec. 33; Van Mater v. Babcock, 23 Barb. 633; Phillips v. R., W. & O. R. Co., 30 N. Y. State Rep'r, 46.

Subd. 6. People v. North R. S. R. Co., 27 N. Y. State Rep'r, 289; 54 Hun, 380. Combinations. Leonard v. Poole, 114 N. Y. 377; People v. Fisher, 14 Wend. 9; Hooker v. Vandewater, 4 Den. 319; Stanton v. Allen, 5 id. 434; Arnot v. P. & E. C. Co., 68 N. Y. 558; Morris R. C. Co. v. B. C. Co., 68 Penn. St. 173; People v. North R. S. R. Co., 121 N. Y. 582, aff'g 54 Hun, 354; Hitchcock's case, 6 C. H. Rec. 43; Leggett v. Postley, 2 Paige, 599; People v. Snaith, 57 Hun, 334; 32 N. Y. State Rep'r, 569; Van Mater v. Babcock, 23 Barb. 633; People v. Everest, 51 Hun, 25; State v. Setter, 54 Conn. 461; People v. Richards, 1 Mich. 216; People v. Lyon, 99 N. Y. 219; 1 N. Y. Cr. 400; Buff. L. O. Co. v. Everest, 30 Hun, 588.

Strike. People, *ex rel.* Gill, v. Smith, 5 N. Y. Cr. 509; People, *ex rel.* Hill, v. Walsh, 15 N. Y. State Rep'r, 17; 6 N. Y. Cr. 292.

Boycott. People v. Kostka, 4 N. Y. Cr. 429; People v. Wilzig, id. 403; People v. Lenhardt, id. 317; Old Dom. Co. v. McKenna, 18 Abb. N. C. 262; Thomas v. Mut. Pro. Union, 121 N. Y. 59; State v. Gideon, 55 Conn. 46; 6 N. Y. Cr. 321; Crump v. Com., 84 Va. 927; 6 N. Y. Cr. 342; State v. Stewart, 59 Vt. 273; Carew v. Rutherford, 106 Mass. 1; Walter v. Cronin, 107 id. 555; State v. Donaldson, 32 N. J. Law, 151; Johnson v. Meinhardt, 61 How. 168; Casey v. Cincinnati, etc., Union, 45 Fed. Rep'r, 135; Calgan v. Wilson, 127 U. S. 540.

Indictment. Elkin v. People, 28 N. Y. 177; 24 How. 272; People v. Everest, 51 Hun, 19; 20 N. Y. State Rep'r, 461; People v. Mather, 4 Wend. 229; People v. Eckford, 7 Cow. 735; Lambert v. People, 9 id. 578; People v. Barrett, 1 Johns. 66; March v. People, 7 Barb. 391; People v. Chase, 16 id. 495; Schultz's case, 5 C. H. Rec. 112; Duprey's case, 4 id. 121.

Evidence. People v. Sharp, 45 Hun, 460; 5 N. Y. Cr. 389, 469; People v. Murphy, 3 id. 339; People v. Bassford, id. 219; Loos v. Wilkinson, 10 N. Y. State Rep'r, 297; Adams v. People, 9 Hun, 89; Kelley v. People, 55 N. Y. 565; People v. Powell, 63 id. 88; People v. Pavlik, 7 N. Y. Cr. 30; People v. Squire, 6 id. 475; Ormsby v. People, 53 N. Y. 472; People v. Kief, 37 N. Y. State Rep'r, 478, aff'g 58 Hun, 337; 34 N. Y. State Rep'r, 527. See note in 24 Abb. N. C. 260.

§ 169. Conspiracies against peace, etc.—If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in a state prison not exceeding ten years.

§ 170. No other conspiracies punishable.—No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade, or handicraft, for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

Master Stevedores' Association v. Walsh, 2 Daly, 1. See § 168, *supra*, § 673, *post*; People, *ex rel.* Gill, v. Smith, 5 N. Y. Cr. 509; Same v. Walsh, 6 id. 292; 15 N. Y. State Rep'r, 17; Zeigler v. Nolan, 2 City Ct. Rep'r, 54; People v. Barondess, 41 N. Y. State Rep'r, 662. See note in 24 Abb. N. C. 260.

§ 171. Overt act, when necessary.— No agreement except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

People v. Mather (Morgan's abduction), 4 Wend. 229. See Code Cr. Proc., § 398. See § 720, *post*.

People v. Squire, 20 Abb. N. C. 375; People v. Chase, 16 Barb. 495; People v. Flack, 125 N. Y. 333; 34 N. Y. State Rep'r, 727; People v. Everest, 51 Hun, 29; 20 N. Y. State Rep'r, 465; Wood v. State, 47 N. J. L. 180.

§ 171"A." Coercion by employers.— Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employe or employes, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employe, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor. The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment. [ADDED, CH. 688. PASSED JUNE 24, 1887.]

Master Stevedores' Ass'n v. Welsh, 2 Daly, 1.

TITLE IX.

Of Crimes against the Person.

CHAP. I. Suicide.
II. Homicide.
III. Maiming.
IV. Kidnapping.
V. Assaults.
VI. Robbery.
VII. Duels and challenges.
III. Libel.

CHAPTER I.

SUICIDE.

SEC. 172. Suicide defined.
173. No forfeiture imposed for suicide.
174. Attempting suicide.
175. Aiding suicide.
176. Abetting an attempt at suicide.
177. Incapacity of person aided, no defense.
178. Punishment of attempting suicide.

§ 172. Suicide defined.— Suicide is the intentional taking of one's own life.

Darrow v. Family F. Soc., 42 Hun, 245; 3 N. Y. State Rep'r, 745.

§ 173. **No forfeiture imposed for suicide.**— Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator, no forfeiture is imposed.

See § 710, *post;* Darrow v. Family F. Soc., 116 N. Y. 542; 27 N. Y. State Rep'r, 476; Freeman v. Nat. Ben. Soc., 5 id. 82; Com. v. Mink, 123 Mass. 422.

§ 174. **Attempting suicide.**— A person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which, if committed upon or towards another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

Drunkenness will not excuse. § 22, *supra;* Rex v. Doody, 6 Cox Cr. C. 463; Darrow v. Family F. Soc., 116 N. Y. 542; 27 N. Y. State Rep'r, 476.

§ 175. **Aiding suicide.**— A person who willfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life, is guilty of manslaughter in the first degree.

Advising suicide. Com. v. Bowen, 13 Mass. 356; 2 Wh. C. C. 226; Blackburn v. State, 23 Ohio (N. S.), 146; Com. v. Mink, 123 Mass. 422; Regina v. Jessup, 10 Cr. L. M. 862.

§ 176. **Abetting an attempt at suicide.**— A person who willfully, in any manner, encourages, advises, assists or abets another person in attempting to take the latter's life, is guilty of a felony.

Com. v. Bowen, 13 Mass. 356; Blackburn v. State, 23 Ohio St. 146.

§ 177. **Incapacity of person aided, no defense.**— It is not a defense to a prosecution under either of the last two sections, that the person who took, or attempted to take, his own life, was not a person deemed capable of committing crime.

§ 178. **Punishment of attempting suicide.**— Every person guilty of attempting suicide is guilty of felony, punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

Darrow v. Family F. Soc., 116 N. Y. 542; 27 N. Y. State Rep'r, 476, aff'g 42 Hun, 245; 3 N. Y. State Rep'r, 745; Blackburn v. State, 23 Ohio St. 146; Matter of Card, 28 N. Y. State Rep'r, 529; 40 Alb. L. J. 22.

CHAPTER II.

HOMICIDE.

SEC. 179. Homicide defined.
180. Different kinds of homicide.
181. What proof of death is required.
182. Common law petit treason is homicide.
183. Murder in first degree defined.
184. Id.; second degree.
185. Duel fought out of this state.
186. Punishment of murder in first degree, how punished.
187. Murder in second degree, how punished.
188. Manslaughter defined.
189. Id.; in the first degree.
190. Killing unborn quick child.
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192. Manslaughter in first degree, how punished.
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SEC. 195. By negligent use of machinery.
196. Owner of animals.
197. Killing by overloading passenger vessel.
198. Liability of persons in charge of steamboats.
199. Liability of persons in charge of steam engines.
200. Liability of physicians.
201. Liability of persons making or keeping gunpowder contrary to law.
202. Punishment of manslaughter in second degree.
203. Homicide, when excusable
204. Justifiable homicide.
205. Same.

§ 179. **Homicide defined.**— Homicide is the killing of one human being by the act, procurement or omission of another.

Homicide is presumed malicious. People v. McLeod, 1 Hill, 377. Homicide, act of several in common design. Ruloff v. People, 45 N. Y. 213; Stipp v. State, 11 Ind. 62; People v. Woody, 45 Cal. 289; State v. Anthony, 1 McCord, 285; People v. Pool, 27 Cal. 572; United States v. Ross, 1 Gallis, 624; People v. Vasquez, 49 Cal. 560; People v. Geiger, id. 643; State v. Nash, 7 Ia. 347; Clien v. State, 33 Ind. 418; People v. Knapp, 26 Mich. 106. Homicide; may be committed by infant between seven and fourteen. Godfrey v. State, 31 Ala. 323. Death from unskillful treatment of injuries. Parsons v. State, 21 Ala. 300; State v. Scott, 12 La. Ann. 274; State v. Baker, 1 Jones, 267; Com. v. McPike, 3 Cush. 181; McAllister v. State, 17 Ala. 434; Com. v. Cortley, 118 Mass. 1; State v. Murphy, 33 Ia. 270; Com. v. Hackett, 2 Allen, 136; Coffman v. Com., 10 Bush (Ky.), 495; State v. Morca, 2 id. 275; Buel v. People, 78 N. Y. 498; Fitzgerald v. People, 37 id. 413; People v. Conroy, 97 N. Y. 62; 2 N. Y. Cr. 665; People v. McCarthy, 110 N. Y. 309; 47 Hun, 491; People v. Hill, 19 N. Y. State Rep'r, 672; Stokes v. People, 53 N. Y. 164; People v. Willett, 36 Hun, 500; People v. McCann, 16 N. Y. 58; Brotherton v. People, 75 id. 159; O'Connell v. People, 87 id. 377.

§ 180. **Different kinds of homicide.** — Homicide is either

1. Murder;
2. Manslaughter;
3. Excusable homicide; or,
4. Justifiable homicide.

Prosecution must establish grade of offense. No legal implication of murder from fact of killing. Stokes v. People, 53 N. Y. 164. Justification. People v. Carnel, 2 Edm. S. C. 290; Sawyer v. People, 1 N. Y. Cr. 249.

See People v. Hill, 19 N. Y. State Rep'r, 672; People v. Giblin, 114 N. Y. 196; 7 N. Y. Cr. 130; People v. Beckwith, 108 N. Y. 361.

§ 181. **What proof of death is required.** — No person can be convicted of murder or manslaughter, unless the death of the person alleged to have been killed and the fact of killing by the defendant as alleged are each established, as independent facts; the former by direct proof and the latter beyond a reasonable doubt.

Corpus delicti to be shown in felony. Ruloff v. People, 18 N. Y. 179; People v. Wilson, 3 Park. 199; People v. Bennett, 49 N. Y. 137; Davis's case, 3 C. H. Rec. 45; People v. Beckwith, 108 N. Y. 68; People v. Palmer, 109 id. 110, rev'g 46 Hun, 479; People v. Deacons, 109 N Y. 374; 16 N. E. Rep'r, 676, note; People v Schryver, 42 N. Y. 1; People v. Badgley, 16 Wend. 53; People v. Hennessey, 15 id. 147; State v. German, 54 Mo. 526; Matthews v. State, 55 Ala. 187; Lee v. State, 76 Ga. 498; People v. Minisci, 12 N. Y. State Rep'r, 720; State v. Moran, 14 Pac. Rep'r, 419; People v. McGonegal, 42 N. Y. State Rep'r, 311. Lucid interval of lunatic must be proved by people. People v. Montgomery, 13 Abb. (N. S.) 207.

§ 182. **Common-law petit treason is homicide.** — The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished; and those homicides are punishable, when not justifiable or excusable, as prescribed by this Code.

Blurred only

§ 183. Murder in first degree defined.—The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed either

From a deliberate and premeditated design to effect the death of the person killed, or of another; or

By an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual; or without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise; or

When perpetrated in committing the crime of arson in the first degree.

Anger in intoxication no defense. §§ 17–23, *supra*. People v. Johnson, 1 Park. 291; People v. Austin, id. 154, 167; People v. Vinegar, 2 id. 24; People v. Sullivan, 7 N. Y. 396; People v. Hendrickson, 9 How. Pr. 155; S. C., 8 id. 404; People v. Van Steenburg, 1 Park. 39; People v. Austin, id. 154; Lake v. People, id. 495; People v. Thayers, id. 595; Colt v. People, id. 611; People v. Robinson, id. 649; S. C., 2 id. 235; Eastwood v. People, 3 id. 25; People v. Williams, id. 84; People v. Wilson, id. 199; People v. McCann, id. 272; People v. Cummings, id. 343, 401; Rogers v. People, id. 632; People v. Stout, id. 670; People v. Wood, id. 681; People v. Cunningham, 6 id. 398, 609; Walter v. People, 32 N. Y. 147, 159; People v. Enoch, 13 Wend. 159, 173; Fraser v. Freeman, 43 N. Y. 566, 570; Fitzgerrold v. People, 37 id. 413, 416; People v. McCann, 16 id. 58; People v. Clark, 7 id. 385; People v. White, 24 Wend. 520, 534; S. C., 22 id. 167; People v. Rector, 19 Wend. 569, 592; Rodgers v. People, 15 How. Pr. 557; People v. Baker, 10 id. 567.

Subd. 1. Intent, how established. People v. Rogers, 13 Abb. Pr. (N. S.) 370; Foster v. People, 50 N. Y. 598; People v. Waltz, 50 How. Pr. 294. What is deliberation. Dolan v. People, 6 Hun, 493; S. C., 64 N. Y. 485; People v. Batting, 49 How. Pr. 392; Leighton v. People, 88 N. Y. 117; People v. Majone, 91 id. 211; People v. Carnel, 2 Edm. S. C. 200; People v. Mulvey, id. 246; People v. Clark, id. 273. Insufficient evidence of intent. People v. Mangano, 29 Hun, 259. Deadly weapon. Thomas v. People, 67 N. Y. 218. Wife taken in adultery. Shuffelin v. People, 4 Hun, 16; S. C., 62 N. Y. 229; McKenna v. People, 81 N. Y. 360. Evidence of intent. People v. Jefferson, 2 N. Y. Cr. 240. Indictment need not specify intent. People v. Conroy, 2 N. Y. Cr. 505; 97 N. Y. 62.

See People v. Beckwith, 108 N. Y. 67; 103 id. 368; People v. Druse, 5 N. Y. Cr. 11; People v. Brunt, 11 N. Y. State Rep'r, 60; 108 N. Y. 656; People v. Walworth, 4 N. Y. Cr. 355; People v. Clark, 7 N. Y. 385; People v. Deacons, 108 id. 378; People v. Cornette, 92 id. 85; People v. Kiernan, 101 id. 618; 4 N. Y. Cr. 88; People v. Trezza, 36 N. Y. State Rep'r, 149; People v. Lewis, 7 N. Y. Cr. 140.

Subd. 2. Acts regardless of life. Darry v. People, 10 N. Y. 120; Lee v. State, 1 Cold. (Tenn.) 62; Commonwealth v. York, 9 Metc. 93; State v. Smith, 2 Strobh. 77; State v. Sisson, 3 Brev. 58; Golliner v. Commonwealth, 2 Duvall (Ky.), 163; Sparks v. Commonwealth, 3 Bush (Ky.), 111.

Subd. 3. Engaged in felony, intent not necessary to constitute murder. Buel v. People, 18 Hun, 487; S. C., 78 N. Y. 492; Cox v. People, 19 Hun, 430; S. C., 80 N. Y. 100; People v. Carmichael, 5 Mich. 10; People v. Adwards, id. 22; Commonwealth v. Keeper, 2 Ashm. 227; Dill v. State, 25 Ala. 15; People v. Hand, 4 A. L. J. 91; Ruloff v. People, 45 N. Y. 213; S. C., 5 Lans. 261; People v. Cole, 2 N. Y. Cr. 108; People v. Conroy, id. 247; 97 N. Y. 62; People v. Greenwall, 115 id. 520; Fitzgerrold v. People, 37 id. 413; People v. Giblin, id. 197; People v. Carlton, id. 623; People v. Johnson, 110 id. 135; Cox v. People, 80 id. 502; People v. Sweeney, 41 Hun, 340; 4 N. Y. Cr. 283.

Subd. 4. People v. Greenwall, 115 N. Y. 524.

See further. People v. Kelly, 113 N. Y. 647; Greenfield v. People, 85 id. 75; Moett v. People, id. 373; Abbott v. People, 86 id. 460; People v. Smith, 121 id. 579; People v. Jackson, 111 id. 362; People v. Lamb, 2 Abb. (N. S.) 148; People v. Willett, 102 N. Y. 251; People v. Hill, 19 N. Y. State Rep'r, 672; People v. Otto, 4 N. Y. Cr. 149; People v. Rego, 36 Hun, 129.

§ 184. Id.; second degree.—Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation.

People v. Sheehan, 49 Barb 217; Kenny v. People, 31 N. Y. 330. Intoxication to disprove deliberation; People v. Batting, 49 How. Pr. 392; People v. Cavanagh, 62 id. 187; People v. Pearce, 2 Edm. S. C. 76; People v. Jones, id. 86; People v. Cassiano, 30 Hun, 388.

See McKenna v. People, 81 N. Y. 360; People v. Thompson, 41 id. 1: Keefe v. People, 40 id. 348; People v. Donovan, 3 N. Y. Cr. 79; People v. Walworth, 4 id. 373; People v. Hill, 19 N. Y. State Rep'r, 672.

§ 185. **Id.; duel fought out of this state.** — A person who, by previous appointment made within the state, fights a duel without the state, and in so doing inflicts a wound upon his antagonist, whereof the person injured dies; or who engages or participates in such a duel, as a second or assistant to either party, is guilty of murder in the second degree, and may be indicted, tried and convicted in any county of this state.

Code Cr. Proc., § 133. See §§ 239, 240, 676, *post;* § 16, *ante.*

§ 186. **Punishment of murder in first degree.** — Murder in the first degree is punishable by death.

See §§ 491-509 of Code of Crim. Proc.

§ 187 **Murder in second degree, how punished.** — Murder in the second degree is punishable by imprisonment for the offender's natural life.

§ 188. **Manslaughter defined.** — In a case other than one of those specified in the sections 183, 184 and 185, homicide, not being justifiable or excusable, is manslaughter.

People v. Ryan, 2 Wh. Cr. C. 47. Degrees. People v. Pearce, 2 Edm. S. C. 76; People v. Donaldson, id. 78; People v. Crowe, id. 152.

What is? People v. McCarthy, 110 N. Y. 316; People v. Beckwith, 108 id. 360; Evans v. People, 49 id. 86; People v. Sullivan, 7 id. 396; People v. Waltz, 50 How. 204; People v. Cole, 2 N. Y. Cr. 113; McCann v. People, 6 Park. 629; People v. Cole, 4 id. 35; People v. Butler, 3 id. 377; People v. Hammill, 2 id 223; People v. Fuller, id. 16; People v. Tannan, 4 id. 514; Wilson v. People, id. 619; Goodwin's case, 6 C. H. Rec. 9; Beal's case, id. 59; Patterson's case, 3 id. 145; People v. Ryan, 2 Whart. C. C. 47; People v. Devine, 1 Edm. Cases, 594; People v. Hill, 19 N. Y. State Rep'r, 672; People v Buddensieck, 103 N. Y. 487; People v. Rego, 36 Hun, 120.

§ 189. **Id.; in the first degree.** — Such homicide is manslaughter in the first degree, when committed without a design to effect death, either

1. By a person engaged in committing, or attempting to commit, a misdemeanor, affecting the person or property, either of the person killed, or of another; or

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

People v. Butler, 3 Park. 377; Darry v. People, 10 N. Y. 120. May convict on indictment for murder. People v. McDonnell, 1 N. Y. Cr. 366; 92 N. Y. 657.

Subd. 1. People v. Rector, 19 Wend. 569.

Subd. 2. Heat of passion. People v. Sullivan, 7 N. Y. 396; Patterson's case, 3 C. H. Rec. 145; People v. Johnson, 1 Park 291; People v. Hammill, 2 id. 223; McCann v. People, 6 id. 629; People v. Sheriff of Westchester Co., 1 Park. 659; Buel v. People, 78 N. Y. 492, 500; Foster v. People, 50 id. 598.

See People v. McKeon. 31 Hun, 449; People v. Rego, 36 id. 129; 3 N. Y. Cr. 276; People v. Cole, 4 Park. 35; People v. McDonald, 49 Hun, 68.

§ 190. **Killing unborn quick child.** — The willful killing of an unborn quick child, by any injury committed upon the person of the mother of such child, is manslaughter in the first degree.

Evans v. People, 49 N. Y. 86; Eckhart v. People, 88 id. 462; 38 Am. Rep. 462; Com. v. Parker, 9 Metc. 263; Mitchell v. Com., 78 Ky. 204; 39 Am. Rep. 229; Smith v. State, 33 Me. 48; Mills v. Com., 13 Penn. St. 633.
See § 294, *post*.

§ 191. **Id.; by administering drugs, etc.**— A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug, or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

See §§ 294, 297, 318, *post*; Watson v. State (Tex.), 22 Alb. L. J. 318; Lohman v. People, 1 N. Y. 379, 383; Hunt v. People, 3 Park. 569; People v. Stockhan, 1 id. 424; People v. Davis, 56 N. Y. 95, 101; Mongeon v. People, 55 id. 613, 615: S. C., 2 Th. & C. 128; Davis v. People, id. 212; Evans v. People, 49 N. Y. 86, 87.

§ 192. **Manslaughter in first degree, how punished.** — Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years.

§ 193. **Manslaughter in second degree.**— Such homicide is manslaughter in the second degree, when committed without a design to effect death, either

1. By a person committing or attempting to commit a trespass, or other invasion of a private right, either of the person killed, or of another, not amounting to a crime; or

2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or [AMD. CH. 23 of 1887.]

3. By any act, procurement or culpable negligence of any person, which, according to the provisions of this chapter, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

Subd. 2. Wilson v. People, 4 Park. 619. See People v. Johnson, 1 id. 291.
Subd. 3. Goodwin's case, 5 C. H. Rec. 52; S. C., 1 Wh. Cr. C. 253; People v. Cole, 4 Park. 35; Randall's case, 5 C. H. Rec. 541; People v. Divine, Edm. S. C. 594; People v. Westchester, 1 Park. 659; People v. Fuller, 2 id. 17. In resisting trespass. Com. v. Drew, 4 Mass. 391; State v. Vance, 17 Ia. 38; State v. Smith, 3 Dev. & Batt. 117. In case of adultery. Sanchez v. People, 22 N. Y. 147; State v. Holme, 54 Mo. 153; State v. John, 8 Ired. 330; Sawyer v. State, 35 Ind. 80; State v. Samuel, 3 Jones, 74; State v. Neville, 6 id. 423; State v. Avery, 64 N. C. 608; People v. Horton, 4 Mich. 67; Lynch v. Com., 77 Penn. St. 505. In mutual combat. State v. Underwood, 57 Mo. 40; U. S. v. Mingo, 2 Curtis C. C. 1. See §§ 195, 202, *post*.
See People v. Buddensieck, 103 N. Y. 487; 5 N. Y. Cr. 69; People v. Mellus, 1 id. 39; People v. Rego, 36 Hun, 129; 3 N. Y. Cr. 275; People v. McCarthy, 47 Hun, 491; aff'd, 110 N. Y. 309; People v. McGrath, 47 Hun, 325.

§ 194. **Woman taking drugs, etc.**— A woman quick with child, who takes or uses, or submits to the use of any drug, medicine, or substance, or any instrument or other means with intent to produce her own miscarriage, unless the same is necessary to preserve her own life, or that of the child whereof she is pregnant, if the death of such child is thereby produced, is guilty of manslaughter in the second degree.

See §§ 294, 295, 318, *post*.

§ 195. **Negligent use of machinery, etc.**— person who, by any act of negligence or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this chapter, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

See § 193, subd. 3, *supra*; § 196, *post*; Wilson v. People, 4 Park. 641; Thomas v. Winchester, 6 N. Y. 397, 409; People v. Austin, 1 Park. 154; People v. Schryver, 42 N. Y. 1, 5; People v. Buddensieck, 103 id. 487.

§ 196. **Owner of animals.**—If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, and not confined, kills a human being, who has taken all the precautions which the circumstances permitted, to avoid the animal, the owner is guilty of manslaughter in the second degree.

See § 195, *supra*; § 640, subd. 11, *post*.

§ 197. **Killing by overloading passenger vessels.**—A person navigating a vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board the vessel, that, by means thereof, the vessel sinks, or is overset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

See § 359, *post*.

§ 198. **Liability of persons in charge of steamboats.**—A person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned is guilty of manslaughter in the second degree.

See §§ 360, 361, 362, *post*.

§ 199. **Liability of persons in charge of steam engines.**—An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who willfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is oduced, is guilty of manslaughter in the second degree.

See §§ 360, 361, 362, 424, *post*.

§ 200. **Liability of physicians.**—A physician or surgeon, or person practicing as such, who, being in a state of intoxication, without a design to effect death, administers a poisonous drug or medicine, or does any other act as a physician or surgeon, to another person,

which produces the death of the latter, is guilty of manslaughter in the second degree.

See § 357, *post*.

§ 201. **Liability of persons making or keeping gunpowder contrary to law.**—A person who makes or keeps gunpowder or any other explosive substance within a city or village, in any quantity or manner prohibited by law, or by ordinance of the city or village, if any explosion thereof occurs, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

See §§ 389, 636, 645, *post*.

§ 202. **Punishment of manslaughter in second degree.**—Manslaughter in the second degree is punishable by imprisonment for a term not exceeding fifteen years, or by a fine of not more than one thousand dollars, or by both.

§ 203. **Homicide, when excusable.**—Homicide is excusable when committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with ordinary caution, and without any unlawful intent.

Correction. State v. Harris, 63 N. C. 1. See § 223, subd. 4, *post*.
Arrest. People v. Carlton, 115 N. Y. 618; 26 N. Y. State Rep'r, 436.

§ 204. **Justifiable homicide.**—Homicide is justifiable when committed by a public officer, or a person acting by his command and in his aid and assistance, either

1. In obedience to the judgment of a competent court; or
2. Necessarily, in overcoming actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty; or
3. Necessarily, in retaking a prisoner who has committed, or has been arrested for, or convicted of a felony, and who has escaped or has been rescued, or in arresting a person who has committed a felony and is fleeing from justice; or in attempting by lawful ways and means to apprehend a person for a felony actually committed, or in lawfully suppressing a riot, or in lawfully preserving the peace.

Of alien enemy, unarmed. State v. Gut, 13 Minn. 341.
Subd. 2. Conraddy v. People, 5 Park. 234.
Subd. 3. Killing prisoner convicted of misdemeanor in escaping, murder. Reneau v. Tenn., 12 Alb. L. J., 57.
See People v. Carlton, 115 N. Y. 623; 26 N. Y. State Rep'r, 436; People v. McCarthy, 47 Hun, 491; aff'd, 110 N. Y. 309

§ 205. **Justifiable homicide.**— Homicide is also justifiable when committed, either

1. In the lawful defense of the slayer, or of his or her husband, wife, parent, child, brother, sister, master or servant, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer, or to any such person, and there is imminent danger of such design being accomplished; or
2. In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is.

See § 26, *supra*; § 223, *post*. Justification. Apprehension of bodily harm. State v. Cheatwood, 2 Hill (S. C.), 459; Com. v. Webster, 5 Cush. 295; State v. Johnson, 1 Ired. 354; Felix v. State, 18 Ala. 720; State v. Baker, 1 Jones, 267; Evers v. People, 3 Hun, 716; S. C., 63 N. Y. 625. Mere apprehension of danger, without overt act, will not justify. Real v. People, 42 N. Y. 270; S. C., 55 Barb. 551; 8 Abb. Pr. (N. S.) 314. Nor will previous ill treatment. Id.

Subd. 1. Stanton's case, 2 C. H. Rec. 164.

Subd. 2. If circumstances furnish reasonable ground of apprehension, act is justifiable. Shorter v. People, 2 N. Y. 163; Patterson v. People, 46 Barb. 625; People v. Lamb, 54 id. 342; People v. Austin, 1 Park. 154; People v. Cole, 4 id. 35; Pfomer v. People, id. 558; Uhl v. People, 5 id. 410. Attack in self-defense, justifiable only after everything done to avoid necessity. People v. Sullivan, 7 N. Y. 396; People v. Cole, 4 Park. 35; People v. Harper, Edm. S. C. 180; Shorter v. People, 2 N. Y. 198.

See People v. Downs, 56 Hun, 11; 29 N. Y. State Rep'r, 121; note in 6 N. Y. Cr. 119; People v. Carlton, 115 N. Y. 623; 26 N. Y. State Rep'r, 426; People v. Druse, 108 N. Y. 655; People v. Walworth, 4 N. Y. Cr. 378; People v. McGrath, 47 Hun, 325; People v. McCarthy, 110 N. Y. 309; 47 Hun, 491.

CHAPTER III.

MAIMING.

SEC. 206. Maiming defined; how punished.
207. Maiming one's self to escape performance of a duty.
208. Maiming one's self to obtain alms.
209. What injury may constitute maiming.
210. Subsequent recovery of injured person, when a defense.

§ 206. Maiming defined, how punished.— A person who willfully, with intent to commit felony, or to injure, disfigure, or disable, inflicts upon the person of another an injury which,

1. Seriously disfigures his person by any mutilation thereof; or
2. Destroys, or disables any member or organ of his body; or
3. Seriously diminishes his physical vigor by the injury of any member or organ;

Is guilty of maiming, and is punishable by imprisonment for a term not exceeding fifteen years. The infliction of the injury is presumptive evidence of the intent.

Mayhem. Burke v. People, 4 Hun, 481; Godfrey v. People, 63 N. Y. 207. Indictment. Tully v. People, 67 N. Y. 15; Foster v. People, 50 id. 598.

§ 207. Maiming one's self to escape performance of a duty.— A person who, with design to disable himself from performing a legal duty, existing or anticipated, inflicts upon himself an injury, whereby he is so disabled is guilty of a felony.

§ 208. Maiming one's self to obtain alms.— A person who inflicts upon himself an injury, such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, in order to excite sympathy, or to obtain alms, or any charitable relief, is guilty of a felony.

§ 209. What injury may constitute maiming.— To constitute maiming, it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

§ 210. Subsequent recovery of injured person, when a defense. — When it appears, upon a trial for maiming another person, that the person has, before the time of trial, so far recovered from the

wound, that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming can be had; but the defendant may be convicted of assault in any degree.

CHAPTER IV.

KIDNAPPING.

SEC. 211. Kidnapping defined.
212. Indictment, where triable.
213. Effect of consent of injured person.
214. Selling services of person.
215. Removing from this state persons held to service in another state.
216. Penalty imposed on judicial officers.

§ **211. Kidnapping defined.**—A person who willfully,

1. Seizes, confines, inveigles, or kidnaps another, with intent to cause him, without authority of law, to be secretly confined or imprisoned within this state, or to be sent out of the state, or to be sold as a slave, or in any way held to service or kept or detained, against his will; or

2. Leads, takes, entices away, or detains a child under the age of sixteen years with intent to keep or conceal it from its parent, guardian, or other person having the lawful care or control thereof, or to extort or obtain money or reward for the return or disposition of the child, or with intent to steal any article about or on the person of the child or, [AMD. CH. 145 of 1888.]

3. Abducts, entices, or by force or fraud unlawfully takes, or carries away another, at or from a place without the state, or procures, advises, aids, or abets such an abduction, enticing, taking, or carrying away, and afterward sends, brings, has, or keeps such person, or causes him to be kept or secreted within this state;

Is guilty of kidnapping, and is punishable by imprisonment for not more than fifteen years.

See § 282, *post*.

Hadden v. People, 25 N Y. 372; People v. Ruloff, 3 Park. 126; People v. Merrill, 2 Park. 590; S. C., 14 N. Y. 76; Nash v. Benedict, 25 Wend. 645.

Subd. 1. Thompson's case, 2 C. H. Rec. 120; Pulford's case, 4 id. 172; Hadden v. People, 25 N. Y. 373; People v. De Leon, 109 N. Y. 228, aff'g 47 Hun, 308; Mandeville v. Guernsey, 51 Barb. 99.

Subd. 2. People v. Navagh, 41 Hun, 188; 4 N. Y. Cr. 295; Kauffman v. People, 11 Hun, 82; People v. Tinsdale, 10 Abb. (N. S.) 374; People v. Brunnell, 18 How. 443; Carpenter v. People, 8 Barb. 603; Moody v. People, 20 Ill. 315; Commonwealth v. Brooks, 9 Gray, 299; State v. Rollins, 8 N. H. 550; United States v. Ancarola, 1 Fed. Rep'r. 676; Manes v. State, 20 Texas, 38; Nutt v. State, 19 id. 340.

See People v. Frink, 41 Hun, 188; 4 N. Y. State Rep'r, 162; People v. Fitzpatrick, 57 Hun, 461; 32 N. Y. State Rep'r, 1013.

§ **212. Indictment, where triable.**—An indictment for kidnapping may be tried either in the county in which the offense was committed, or in any county through or in which the person kidnapped or confined was taken or kept, while under confinement or restraint.

§ **213. Effect of consent of injured person.**—Upon a trial for a violation of this chapter, the consent thereto of the person kidnapped or confined shall not be a defense, unless it appear satisfactorily to

the jury that such person was above the age of twelve years, and that the consent was not extorted by threats or duress.

People v. De Leon, 109 N. Y. 226; 47 Hun, 313.

§ 214. **Selling services.**—A person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnapped in or from this state, is punishable by imprisonment in a state prison not exceeding ten years.

People v. Merrill, 2 Park. 590; S. C., 14 N. Y. 75.

§ 215. **Removing from this state persons held to service in another state.**— A person claiming that he or another is entitled to the services of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by special statute, takes, or removes, or willfully does any act tending towards removing from this state any such person, is guilty of felony, punishable by imprisonment in the state prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

§ 216. **Penalty imposed on judicial officers.**— A judge, or other public officer of this state who grants or issues any warrant, certificate or other process, in any proceeding for the removal from this state of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of the statute of this state, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

CHAPTER V.

ASSAULTS.

SEC. 217. Assault in first degree defined.
218. Id.; in second degree.
219. Id.; in third degree.
220. Assault in first degree, how punished.
221. Id ; in second degree.
222. Id.; in third degree.
223. Use of force or violence, declared not unlawful, etc.

§ 217 **Assault in first degree defined.**— A person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another,

1. Assaults another with a loaded fire-arm, or any other deadly weapon, or by any other means or force likely to produce death; or

2. Administers to or causes to be administered to or taken by another, poison, or any other destructive or noxious thing, so as to endanger the life of such other;

Is guilty of assault in the first degree.

When intent to kill will be inferred. Hagaman's case, 3 C. H. Rec. 73; People v. Vinegar, 2 Park. 224; Lenahan v. People, 3 Hun, 164; S. C., 5 Th. & C. 285; People v. Shaw, 1 Park. 327; Foster v. People, 50 N. Y. 598, 608; People v. Davis, 4 Id. 61, 69; S. C., 18 How. 134; O'Leary v. People, Id. 187, 193. A bat-

tery must be intended. People v. Johnson, 9 W. Dig. 384. Statute of assault with intent to steal, still in force. *Ex parte* Davis, 1 N. Y. Cr. 58. Knowledge of poison. People v. Stokes, 2 N. Y. Cr. 382. Indictment, assault first degree. People v. Whedon, 2 N. Y. Cr. 518. Intent to rape. People v. Clark, 3 N. Y. Cr. 280.

Subd. 1. O'Blenis's case, 1 C. H. Rec. 117; Mulligan v. People, 5 Park. 105; People v. Carlton, 115 N. Y. 624; People v. Ryan, 55 Hun, 214; 7 N. Y. Cr. 450; People v. Dartmore, 48 Hun, 322; People v. Conner, 53 id. 353; Filkins v. People, 69 N. Y. 101; People v. Cavanaugh, 62 How. 187; People v. Sullivan, 4 N. Y. Cr. 197; People v. Gibbs, 1 id. 473; People v. Odell, 14 W. Dig. 406; State v. Keasling, 74 Iowa, 523; Trevinio v. State, 27 Tex. App. 372; People v. Morehouse, 25 N. Y. State Rep'r, 294; Dunaway v. People, 110 Ill. 333; M'Gehee v. State, 62 Miss. 772; Lacefield v. State, 34 Ark. 275; Chapman v. State, 78 Ala. 463.

Subd. 2. People v. Burgess, 45 Hun, 157; 5 N. Y. Cr. 514.

See People v. O'Connell, 60 Hun, 111; 38 N. Y. State Rep'r, 108; Same v. Same, 35 id. 940; People v. Ryan, 55 Hun, 215; 27 N. Y. State Rep'r, 917; People v. Terrell, 33 id. 370.

§ 218. Id.; in second degree.— A person who, under circumstances not amounting to the crime specified in the last section,

1. With intent to injure, unlawfully administers to, or causes to be administered to, or taken by, another, poison, or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or

2. With intent thereby to enable or assist himself or any other person to commit any crime, administers to or causes to be administered to, or taken by another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anæsthetic agent; or

3. Willfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon: or

4. Willfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or

5. Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person;

Is guilty of assault in the second degree.

See §§ 278, 358, 447, *post*. Different assaults near same time. 1 N. Y. Cr. 473. Evidence of previous assaults. People v. Irving, 19 W. Dig. 7. Intent explained. People v. Cooper, 3 N. Y. Cr. 117.

Subd. 3. Weapon. People v. Irving, 31 Hun, 615; 2 N. Y. Cr. 47.

Subd. 4. Filkins v. People, 69 N. Y. 101; Foland v. Johnson, 16 Abb. 235; People v. Hickey, 11 Hun, 631; People v. Cavanagh, 62 How. Pr. 87; People v. Connor, 53 Hun, 353; People v. Murray, 54 id. 407; 27 N. Y. State Rep'r, 84; People v. Ryan, 55 Hun, 220; 27 N. Y. State Rep'r, 918; People v. Terrell, 33 id. 370; People v. Sullivan, 4 N. Y. Cr. 194; People v. Sweeney, id. 275; 41 Hun, 332; People v. Cole, 2 N. Y. Cr. 112; Simpson v. State, 59 Ala. 1.

Subd. 5. Assault with intent to rape. Hays v. People, 1 Hill, 351; People v. Bransby, 32 N. Y. 525; People v. Quin, 50 Barb. 128. Levy of constable. People v. Hall, 2 N. Y. Cr. 134. See People v. Clark, 3 N. Y. Cr. 280; People v. Cooper, id. 117; People v. Shanley, 40 Hun, 477; 4 N. Y. Cr. 472; People v. Baker, 89 N. Y. 460; People v. Ryan, 28 N. Y. State Rep'r, 490; People v. Aldrich, 33 id. 791.

§ 219. Id.; in third degree.— A person who commits an assault, or an assault and battery, not such as is specified in the foregoing sections of this chapter, is guilty of assault in the third degree.

Ch. 374, § 3, of 1862, defining assault with intent to steal, not repealed. People v. Bernardo, 1 N. Y. Cr. 245. Same as assault and battery. 2 id. 168; Matter of Gray, id., 302. Slightest touching of person of another in a rude and angry manner is assault and battery. Spence v. Duffy, 1 C. H. Rec. 39; People

v. Powers, 1 Wh. Cr. C. 405. See Fairme's case, 5 C. H. Rec. 95; Goodwin's case, 6 id. 9; People v. Lee, 1 Wh. Cr. C. 364. Husband or wife. Gorman v. State, 42 Tex. 221; People v. Winters, 2 Park. 10; State v. Mabrey, 64 N. C. 592. Indecent assault. People v. Court of Special Sessions, 18 Hun, 330. Sprinkling paint. People v. McMurray, 1 Wh. C. C. 62. What is assault. State v. Morgan, 3 Ired. 186; U. S. v. Hand, 2 Wash. C. C. 435. By same act on several persons at once. State v. Bradley, 34 Tex. 95. Menace not sufficient without intent. People v. Yalas, 27 Cal. 630; Smith v. State, 39 Miss. 521; Yoes v. State, 4 Eng. 42; Lawson v. State, 80 Ala. 14. See State v. Sims, 3 Strobh. 137; State v. Davis, 1 Ired. 125; State v. Benedict, 11 Vt. 236; State v. Vamroy, 65 N. C. 532; Com. v. White, 110 Mass. 407; State v. Myers, 19 Iowa, 517; People v. Bransby, 32 N. Y. 525; Com. v. Ordway, 12 Cush. 270; State v. Eperson, 27 Mo. 255; Tarver v. State, 43 Ala. 354; State v. Gorham, 55 N. H. 152. To strike horse of person driving is not. Kirkland v. State, 43 Ind. 146; State v. Baker, 65 N. C. 333; Stockton v. State, 25 Tex. 772. Detention. Long v. Rogers, 17 Ala. 540; Keife v. State, 19 Ark. 190. Absence of intent. Warren v. State, 33 Tex. 517; State v. Blackwell, 9 Ala. 79; Richels v. State, 1 Sneed, 606; Com. v. Eyre, 1 Serg. & R. 347; State v. Com., 1 Ired. 375. Mutual consent. State v. Lonon, 19 Ark. 577; Hays v. People, 1 Hill, 351; 2 Bish. Cr. L., § 32. Must be an intent to strike to constitute assault. State v. Davis, 1 Ired. (N C.) 121; State v. Crow, id. 375; Com. v. Eyre, 1 Serg. & R. 347; U. S. v. Hand, 2 Wash. C. C. 435. Any such intent sufficient. State v. Morgan, 3 Ired. (N. C.) 186. Presenting unloaded weapon, purporting to be loaded, is assault. State v. Smith, 2 Humph. 457; Rex v. Parfait, Lach. 23; East P. C. 416; Rex v. Thomas, Lach. 272; Morgan v. State, 33 Ala. 413. If party actually consents, no assault. Reg. v. Cockburn, 3 Cox C. C. 543; Reg. v. Read, 2 Carr. & K. 957; Rex v. Wehegan, 7 Cox C. C. 145. Mere omission to resist will not excuse indecent assault on child. People, *ex rel.* Engel, v. Special Sessions, 18 Hun, 330; Reg. v. McGavarun, 6 Cox C. C. 64; Reg. v. Case, 4 id. 220. See People v. Hale, 18 W. Dig. 213; 1 N. Y. Cr. 533; People v. Persons, 2 id. 114; People v Moore, 50 Hun, 356; Clark v. Downing, 55 Vt. 259; Kirkland v. State, 43 Ind. 146; People v. Lee, 1 Wheeler Cr. Cas. 364; Com. v. Hazenlock, 140 Mass. 125; Corning v. Corning, 6 N. Y. 97; Slattery v. People, 1 Hun, 311; People v. Holcomb, 4 Park. 656; People v. Maschke, 2 N. Y. Cr. 168; Matter of Bray, 34 N. Y. State Rep'r, 642; People, *ex rel.* Brown, v. Carpenter, 123 N. Y. 640.

§ 220. **Assault in first degree, how punished.**—Assault in the first degree is punishable by imprisonment for a term not exceeding ten years.

People v. O'Connell, 60 Hun, 113; 38 N. Y. State Rep'r, 108.

§ 221. **Id.; in second degree.**—Assault in the second degree is punishable by imprisonment in a penitentiary or state prison for a term not exceeding five years, or by a fine of not more than one thousand dollars, or both.

People v. Terrell, 33 N. Y. State Rep'r, 369; People v. Cole, 2 N. Y. Cr. 112. See § 5, *ante*.

§ 222. **Id.; in third degree.**—Assault in the third degree is punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or both.

See Code Cr. Proc., § 56. Distinction between misdemeanor and felony. People v. Maschke, 2 N. Y. Cr. 306. Imprisonment must be in jail or penitentiary. 19 W. Dig. 205; People v. Van Vechten, id. 291. Third degree. People v. Kelly, 97 N. Y. 212; People v. Sutton, 6 N. Y. Supp. 95; Matter of Bray, 34 N. Y. State Rep'r, 642.
See § 15, *ante*.

§ 223. **Use of force or violence, declared not unlawful, etc.**—To use or attempt, or offer to use, force or violence upon or towards the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of a legal duty; or by any other person assisting him or acting by his direction;

2. When necessarily committed by any person in arresting one who has committed a felony, and delivering him to a public officer competent to receive him in custody;

3. When committed either by the party about to be injured or by another person in his aid or defense, in preventing or attempting to prevent an offense against his person, or a trespass or other unlawful interference with real or personal property in his lawful possession, if the force or violence used is not more than sufficient to prevent such offense;

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar, and the force or violence used is reasonable in manner and moderate in degree;

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from a carriage, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force or violence used is not more than sufficient to expel the offending passenger, with a reasonable regard to his personal safety;

6. When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or in enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

See §§ 26, 203, 205, *supra*; § 377, *post*; Code Cr. Proc., § 83; 19 W. Dig. 262. Assent. People v. Persons, 2 N. Y. Cr. 114.

Subd. 1. Conraddy v. People, 5 Park. 234; State v. Hull, 34 Conn. 132; Golden v. State, 1 Rich. (N. C.) 292; Com. v. Ruggles, 6 Allen, 588; Com. v. Max, 8 Phila. 422; People v. Bush, 1 Wheeler Cr. Cas. 137; Clements v. State, 60 Ala. 117.

Subd. 2. People v. Adler, 3 Park. 249; People v. Wolven, 7 N. Y. Leg. Obs. 89; People v. McArdle, 1 Wh. C. C. 101.

Subd. 3. Corey v. People, 45 Barb. 262; Wood v. Phillips, 43 N. Y. 152; People v. Gulick, Lalor, 229; Gyre v. Culver, 47 Barb. 592; Harrington v. People, 6 Id. 607; Evers v. People, 3 Hun, 716; 63 N. Y. 625; Patterson v. People, 46 Barb. 625; People v. Lamb, 54 Id. 342; 2 Keyes, 360; Shorter v. People, 2 N. Y. 193; People v. Sullivan, 7 Id. 396; People v. Cole, 4 Park. 35; People v. Austin, 1 Id. 154; Ruloff v. People, 45 N. Y. 213.

Subd. 4. By parent. State v. Alford, 68 N. C. 322. By teacher. State v. Pendergrass, 2 Dev. & Batt. 365; Gardner v. State, 4 Ind. 632; Com. v. Randall, 4 Gray, 36; Anderson v. State, 3 Head, 455; State v. Williams, 27 Vt. 755; Morris' case, 1 C. H. Rec. 52. By master. People v. Shiffin 1 Wh. C. C. 512; People v. Phillips, Id. 155; Hernandez v. Carnokli, 4 Duer, 642; Starr v. Liftchild, 40 Barb. 541; Van Vacter v. State, 113 Ind. 276; State v. Mixner, 45 Iowa, 248; 24 Am. Rep. 769; State v. Burton, 45 Wis. 150; Deskins v. Gose, 85 Mo. 485; Lander v. Seaver, 32 Vt. 114; Hutton v. State, 23 Tex. App. 386; Snowden v. State, 12 Id. 105.

Subd. 5. Hibbard v. N. Y. & E. R. Co., 15 N. Y. 455; Sanford v. Eighth Ave. R. Co., 23 Id. 343; State v. Chorin, 7 Iowa, 204; State v. Goold, 53 Me. 279; State v. Campbell, 32 N. J. 309; State v. Overton, 4 Zabr. 435; Reg. v. Mann, 6 Cox C. C. 461; People v. Gibson, 3 Park. 234; Higgins v. Watervliet, etc., R. Co., 46 N. Y. 23; Pease v. Railroad Co., 101 Id. 370; Steamboat Co. v. Brockett, 121 U. S. 637.

CHAPTER VI.

ROBBERY.

SEC. 224. Robbery defined.
225. How force or fear must be employed.
226. Degree of force immaterial.
227. Taking property secretly.
228. Robbery in first degree.
229. Id.; second degree.
230. Id.; third degree.
231. Punishment of robbery in first degree.
232. Id.; in second degree.
233 Id.; in third degree.

§ 224. **Robbery defined.** — Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery.

Must be by force or violence. Plato's case, 2 C. H. Rec. 31. What force sufficient to constitute offense. Mahony v. People, 3 Hun, 202, aff'd. Ownership. Brooks v. People, 49 N. Y. 436. Threats. People v. McDaniels, 1 Park. 198. Proof of *corpus delicti*. Bloomer v. People, 1 Abb. Dec. 146. See McCoskey v. People, 5 Park. 299; Mahoney v. People, 5 Lans. 329; S. C., 59 N.Y. 659; People v. McDaniels, 1 Park. 198; People v. Hall, 6 id. 642; Com. v. Holland, 1 Duvall (Ky.), 182; State v. Gorham, 55 N. H. 152; State v. McCune, 5 R. I. 60; Long v. State, 12 Ga. 293; People v. Loop, 3 Park. 559; Quinlan v. People, 6 id. 9; People v. Rose, 52 Hun, 33; Bloomer v. People, 3 Keyes, 9; 1 Abb. App. Dec. 146; People, *ex rel.* Hutchinson, v. O'Neill, 21 N. Y. State Rep'r, 274; 6 N. Y. Cr. 226; People v. McGinty, 24 Hun, 62; Murphy v. People, 3 id. 114; Hope v. People, 83 N. Y. 418; Arnold v. State, 52 Ind. 281; State v. Hollywood, 41 Iowa, 200; State v. Calhoun, 72 id. 432; Evans v. State, 80 Ala. 4; Shinn v. State, 64 Ind. 13; People v. Glynn, 54 Hun, 332; People v. Barondess, 41 N. Y. State Rep'r, 662.

§ 225. **How force or fear must be employed.** — To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery.

See Hope v. People, 11 W. Dig. 386; McGinty v. People, id. 510; McCoskey v. People, 5 Park. 299; People v. Foley, 9 N. Y. State Rep'r, 34; Mahoney v. People, 3 Hun, 202; People v. Glynn, 54 id. 332; Hope v. People, 83 N. Y. 418; 11 W. Dig. 386; People v. McGinty, 24 Hun, 62; 11 W. Dig. 510.

§ 226. **Degree of force immaterial.** — When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

Mahoney v. People, 3 Hun, 202; 59 N. Y. 659; People v. McGinty, 24 Hun, 62; People v. Foley, 9 N. Y. State Rep'r, 34; 27 W. Dig. 217.

§ 227. **Taking property secretly.** — The taking of property from the person of another is robbery, when it appears that although the taking was fully completed without his knowledge, such knowledge was prevented by the use of force or fear.

Pocket picking. Norris's case, 6 C. H. Rec. 163. Snatching articles. Anderson's case, 1 id. 163; McCloskey v. People, 5 Park. 299; People v. Hall, 6 id. 642.

§ 228. **Robbery in first degree.** — An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the

foregoing sections of this chapter, is robbery in the first degree, when committed by a person,

1. Being armed with a dangerous weapon; or
2. Being aided by an accomplice actually present; or
3. When the offender inflicts grievous bodily harm or injury upon the person from whose possession, or in whose presence, the property is taken, or upon the wife, husband, servant, child, or inmate of the family of such person, or any one in his company at the time, in order to accomplish the robbery.

State v. Farrar, 41 N. H. 53; Moody v. People, 20 Ill. 315; State v. Stoyell, 54 Me. 24; People v. Parshall, 6 Park. 129; Carpenter v. People, 8 Barb. 608; Com. v. Cook, 12 Metc. 93; Com. v. Nickerson, 5 Allen, 518; People v. McInerney, 5 N.Y. Cr. 48.

§ 229. **Id.; second degree.** — Such unlawful taking or compulsion, when accomplished by force or fear, in a case specified in the foregoing sections of this chapter, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished either

1. By the use of violence; or
2. By putting the person robbed in fear of immediate injury to his person or that of some one in his company.

People v. McDaniels, 1 Park. 198; People v. Holfelder, 5 N. Y. Cr. 179

§ 230. **Id.; third degree.** — A person who robs another, under circumstances not amounting to robbery in the first or second degree, is guilty of robbery in the third degree.

§ 231. **Punishment of robbery in first degree.**—Robbery in the first degree is punishable by imprisonment for a term not exceeding twenty years.

§ 232. **Id.; in second degree.**—Robbery in the second degree is punishable by imprisonment for a term not exceeding fifteen years.

§ 233. **Id.; in third degree.**—Robbery in the third degree is punishable by imprisonment for not more than ten years.

CHAPTER VII.

DUELS AND CHALLENGES.

SEC. 234. Dueling, defined and punished.
235. Challenger, abettor, etc.
236. Challenge defined.
237. Attempts to induce a challenge.
238. Posting for not fighting.
239. Duel outside of state.
240. Where such person may be indicted and tried.
241. Witnesses.

§ 234. **Dueling, defined and punished.**— A person who fights a duel or engages in any combat with another, with deadly weapons, by previous agreement, or upon a previous quarrel, although no death or wound ensues, is punishable by imprisonment for a term not exceeding ten years. A person convicted under this section is thereafter incapable of holding, or of being elected or appointed to

any office or place of trust or emolument, civil or military, within the state.

See § 458, *post*. Herriott v. State, 1 McMullan, 126; Barker v. People, 3 Cow. 686; S. C., 20 Johns. 457; Angler v. People, 34 Ill. 486; State v. Perkins, 6 Blackf. 20; Com. v. Hart, 6 J. J. Marsh. 119.

§ 235. **Challenger, abettor, etc.**—A person who challenges another to fight a duel, or who sends a written or verbal message, purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or who accepts such a challenge or message, or who knowingly carries or delivers such a challenge or message, or who is present at the time appointed for such a duel or combat, or when such a duel or combat is fought, either as second, aid, or surgeon, or who advises or abets, or gives any countenance or assistance to such a duel or combat upon previous agreement, is punishable by imprisonment for not more than seven years.

Norton's case, 3 C. H. Rec. 90; Wood's case, id. 139. Form of challenge. Ives v. State, 12 Ala. 276; State v. Perkins, 6 Blackf. 20.

§ 236. **Challenge defined.**—Any word, spoken or written, or any sign, uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand, to fight a duel, or to meet for the purpose of fighting a duel, is deemed a challenge.

See § 459, *post*. State v. Perkins, 6 Blackf. 20; Com. v. Tibbs, 1 Dana, 524.

§ 237. **Attempts to induce a challenge.**—A person guilty of sending or using to another any word or sign whatever, with intent to provoke or induce such person to give or receive a challenge to fight a duel, is guilty of a misdemeanor.

King v. Phillips, 6 East, 464; Rex v. Rice, 3 id. 581.

§ 238. **Posting for not fighting.**—A person who posts or advertises another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, uses reproachful or contemptuous language to or concerning any one, for not sending or accepting a challenge to fight a duel, or for not fighting a duel, is guilty of a misdemeanor.

Vermont v. Davidson, 30 Vt. 377.

§ 239. **Duel outside of state.**—A person who leaves this state with intent to elude any provision of this chapter, or to commit any act without this state, which is prohibited by this chapter, or who being a resident of this state, does any act without this state, which would be punishable by the provisions of this chapter, if committed within this state, is guilty of the same offense, and subject to the same punishment, as if the act had been committed, or was to have been consummated within this state.

See § 188, *supra*; § 461, *post*. Code Cr. Proc., § 133. *Lex loci*. Com. v. Boot, Thach. Cr. C. 390; State v. Taylor, 3 Brev. 243; Harris v. State, 58 Ga. 332; Ivey v. State, 12 Ala. 276.

§ 240. **Id.; where may be indicted and tried.**—A person offending against any provision of the last section may be indicted and tried in any county within this state; but the person so offending

may plead a former conviction or acquittal in another state or country for the same offense; and if such plea is admitted or established, it shall be a bar to further proceedings against him, for such offense.

See § 185, *supra*.

§ 241. **Witnesses.** — A person offending against any provision of this chapter is a competent witness against any other person offending in the same transaction, and must not be excused from testifying or answering any question, upon an investigation or trial for an offense under this chapter, upon the ground that his testimony might tend to convict him of a crime. But evidence given by a person so testifying, cannot be received against him, in any criminal action or proceeding.

See § 712, *post*. State v. Dupont, 2 McCord, 334; Wood's case, 3 C. H. Rec. 139.

CHAPTER VIII.

LIBEL.

Sec. 242. Libel defined.
243. Libel a misdemeanor.
244. Malice presumed. Defense to prosecution.
245. Publication defined.
246. Liability of editors and others.
247. Publishing a true report of public official proceedings.
248. Qualification of last section.
249. Indictment for libel in newspaper.
250. Libel against non-resident.
251. Punishment restricted.
252. Power of court, place of trial.
253. Privileged communications.
254. Threatening to publish libel.

§ 242. **Libel defined.** —A malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule or obloquy, or which causes, or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation, is a libel.

What is a libelous publication. Steele v. Southwick, 9 Johns. 214; Mezzaara's case, 2 C. H. Rec. 119; Spooner's case, 3 id. 97; People v. Judah, 2 Wh. Cr. C. 26; Stone v. Cooper, 2 Den. 293; Fry v. Bennett, 28 N. Y. 324; More v. Bennett, 48 id. 472; Sunderlin v. Bradstreet, 46 id. 188; Littlejohn v. Greeley, 13 Abb. Pr. 41. Must be malicious. Coleman's case, 2 C. H. Rec. 49; Cooper v. Greeley, 1 Den. 347; Riggs v. Denniston, 3 Johns. Cas. 198; White v. Delavan, 17 Wend. 49; Powers v. Dubois, id. 63; Cramer v. Riggs, id. 209; Weed v. Foster, 11 Barb. 203; Stillwell v. Barter, 19 Wend. 487; Moffat v. Cauldwell, 3 Hun, 26. Repetition of libel after recovery. Woods v. Pangburn, 75 N. Y. 495. Libelous charges. Dwyer v. F. J. Co., 11 Daly, 248, 251; Kingsbury v. Bradstreet, 35 Hun, 212; U. S. Ass. v. Mer. Agency, 16 Abb. N. C. 419; Weed v. Foster, 11 Barb. 203; Ryckman v. Delavan, 25 Wend. 186; Fidler v. Same, 20 id. 51; Turrill v. Dolloway, 17 id. 426; Robertson v. Bennett, 44 Supr. 66; Williams v. Godkin, 5 Daly, 499; Edsall v. Brooks, 26 How. 426; Sanderson v. Caldwell, 45 N. Y. 401; Giles v. State, 6 Ga. 276; Morey v. Morning J. Ass'n, 123 N. Y. 207; Moore v. Francis, 121 id. 199; More v. Bennett, 48 id. 475; Carroll v. White, 33 Barb. 615; Wright v. Paige, 36 id. 438; aff'd, 3 Trans. App. 134; Perkins v. Mitchell, 31 Barb. 465; Nash v. Benedict, 25 Wend. 645; Ryer v. Fireman's J. Co., 11 Daly, 251; Hetherington v. Sterry, 28 Kans. 426; Bradley v. Cramer, 59 Wis. 309; State v. Smily, 37 Ohio, 30; Steketee v. Kimm, 48 Mich. 322; Smith v. Smith, 73 id. 445. See further, Shelley v. Sun P. Co., 38 Hun, 474; 109 N. Y. 611; Bergman v. Jones, 94 id. 52; Carpenter v.

Hammond, 1 N. Y. State Rep'r, 551; People v. Isaacs, 1 N. Y. Cr. 148; Hayes v. Ball, 72 N. Y. 420; People v. Parr, 42 Hun, 313; People v. Seaman, 6 N. Y. State Rep'r, 765; People v. Stark, 59 Hun, 54; 35 N. Y. State Rep'r, 152; People v. Clegg, 32 id. 701; Clark v. Anderson, 33 id. 866.

§ 243. **Libel a misdemeanor.**—A person who publishes a libel, is guilty of a misdemeanor.

People v. Stark, 59 Hun, 58; 35 N. Y. State Rep'r, 155.

§ 244. **Malice presumed. How justified or excused.**—A publication having the tendency or effect, mentioned in section 242, is to be deemed malicious, if no justification or excuse therefor is shown. The publication is justified when the matter charged as libelous is true, and was published with good motives and for justifiable ends. The publication is excused when it is honestly made, in the belief of its truth and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public.

Art. 1, § 8, N. Y. Const. Rumors, no justification. Powers v. Skinner, 1 Wend. 451. That article was copied no defense. Hotchkiss v. Oliphant, 2 Hill, 510. Nor that author's name was given. Dole v. Lyon, 10 Johns. 447. Truth must be established. Rice v. Withers, 9 Wend. 138. Truth goes to the intent. People v. Tracy, 2 Wh. Cr. C. 358. Justifiable motives. Baldwin's case, 3 C. H. Rec. 61. See Root v. King, 7 Cow. 613; S. C., 4 Wend. 114; Washburne v. Cook, 3 Den. 110; Fry v. Bennett, 28 N. Y. 324. See Hamilton v. Eno, 81 N. Y. 122; Brooks v. Harrison, 91 id. 89; Byam v. Collins, 111 id. 150; Hunt v. Bennett, 19 id. 176; Snyder v. Andrews, 6 Barb. 43; Daly v. Byrne, 1 Abb. N. C. 150; Root v. King, 7 Cow. 613; Cooper v. Barber, 24 Wend. 105; Fidler v. Delevan, 20 id. 57; Stilwell v. Barter, 19 id. 487; Bartholomey v. People, 2 Hill, 248.

§ 245. **Publication defined.**—To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself.

Lyle v. Classon, 1 Cai. 581; Van Cleef v. Lawrence, 2 C. H. Rec. 41; Trumbull v. Gibbons, 3 id. 97; Snyder v. Andrews, 6 Barb. 43; Lewis v. Few, 5 Johns. 1; Southwick v. Stevens, 10 id. 443; Giles v. State, 6 Ga. 76; Prescott v. Tousey, 50 Supr. 12; Warnock v. Mitchell, 43 Fed. Rep'r, 428; Sesler v. Montgomery, 78 Cal. 486; Schenck v. Schenck. 20 N. J. L. 208; Wood v. Winans, 47 Hun, 362; rev'd on other grounds, 122 N. Y. 445.

§ 246. **Liability of editors and others.**—Every editor, or proprietor of a book, newspaper or serial, and every manager of a partnership or incorporated association, by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

Andres v. Wells, 7 Johns. 260; Huff v. Bennett, 4 Sandf. 120; Fry v. Bennett, 28 N. Y. 324; Com. v. Kneeland, Thach. Cr. C. 846; Rex v. Gatch, 1 Moo. & M. 433; Shelley v. Sun. P. Ass'n, 48 Hun, 474; 109 N. Y. 611; Ropke v. Brooklyn Daily Eagle, 9 N. Y. State Rep'r, 709; Hunt v. Bennett, 19 N. Y. 175; Purdy v. Rochester P. Co., 96 N. Y. 372; Sunderlin v. Bradstreet, 46 id. 188; Press Co. v. Stewart, 119 Penn. St. 584; Bruce v. Reed, 104 id. 408.

§ 247. **Publishing a true report of public official proceedings.**— A prosecution for libel cannot be maintained against a reporter, editor, publisher, or proprietor of a newspaper, for the publication therein, of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report.

See § 143, *supra*, 7; *supra*. Thomas v. Croswell, 7 Johns. 264; Wilcox v. Bennett, 1 U. S. Law Mag. 131; Steele v. Southwick, 9 Johns. 214; Ackerman v. Jones, 5 J. & S. 42; Edsall v. Brooks, 2 Rob. 29; Sanford v. Bennett, 24 N. Y. 20; McCabe v. Cauldwell, 18 Abb. Pr. 377; Stanley v. Webb, 4 Sandf. 221.

§ 248. **Qualification of last section.** — The last section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication; or in the report of any thing said or done at the time and place of the public and official proceeding, which was not a part thereof.

Stanley v. Webb, 4 Sandf. 221.

§ 249. **Indictment for libel in newspaper.**— An indictment for a libel, contained in a newspaper published within this state, against a resident thereof, may be found either in the county where the paper was published, or in the county where the person libeled resided when the offense was committed. In the latter case the defendant is entitled to an order of the Supreme Court, directing the indictment against him to be tried in the county in which the paper was printed and published, upon compliance with the following conditions:

1. He must apply for the order within thirty days after being committed upon, or giving bail to answer, the indictment;
2. He must execute a bond to the complainant, with two sufficient sureties, approved by the judge hearing his application, in a penal sum fixed by the judge, not less than two hundred and fifty nor more than one thousand dollars, conditioned for the payment, in case the defendant is convicted, of all the complainant's reasonable expenses in going to and from his place of residence and the place of trial, and in attendance upon the trial;
3. He must, within ten days after the granting of the order, file the order and deposit the bond with the clerk of the county in which the indictment is pending.

Code Cr. Proc., § 138.

§ 250. **Libel against non-resident.** — An indictment for a libel published against a person not a resident of this state, must be found and tried in the county, where the paper containing the libel purports upon its face to be published; or, if no county is indicated upon the face of the paper, in any county where the paper was circulated.

Code Cr. Proc., § 138; Trumbull v. Gibbons, 3 C. H. Rec. 397.

§ 251. **Punishment restricted.**— A person cannot be indicted or tried for the publication of the same libel, against the same person, in more than one county.

Code Cr. Proc., § 138.

§ 252. **Power of court, place of trial.**— Nothing contained in this chapter shall be construed to abridge, or in any manner affect, the

power of a competent court, to change the place of trial of an indictment for libel; in the same manner as may lawfully be done, in respect to any other indictment.

§ **253. Privileged communications.**—A communication made to a person entitled to, or interested in, the communication, by one who was also interested in or entitled to make it, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is presumed not to be malicious, and is called a privileged communication.

When privileged. Legislative or judicial proceedings. Kelly v. Taintor, 48 How. Pr. 270; Thorn v. Blanchard, 5 Johns. 508; Vandezee v. McGregor, 12 Wend. 545; Cook v. Hill, 3 Sandf. 341. To bishop, or priest. O'Donaghue v. McGovern, 23 Wend. 26. Secret society. Streety v. Wood, 15 Barb 105. Investigating committee of college. Van Wyck v. Aspinwall, 17 N. Y. 190. To fire marshal. Newfield v. Copperman, 47 How. Pr. 87. Literary criticism. Reade v. Swertzer, 8 Abb. Pr. (N. S.) 9n. Agent. Lewis v. Chapman, 16 N. Y. 369. Advice by private letter. Washburn v. Cooke, 3 Den. 110. Pleading. Garr v. Selden, 4 N. Y. 91. Affidavit on motion Suydam v. Moffatt, 1 Sandf. 459; Warner v. Paine, 2 id. 195. Objections filed by counsel. Marsh v. Ellsworth, 50 N. Y. 309. Between parties interested in prosecution. Klinck v. Colby, 46 N. Y. 427. Certificate of insanity. Perkins v. Mitchell, 31 Barb. 461. What not privileged. Address signed by president of public meeting of electors. Lewis v. Few, 5 Johns. 1. Criticism of operatic management. Fry v. Bennett, 28 N. Y. 324. Affidavit before governor, who has no jurisdiction. Hosmer v. Loveland, 19 Barb. 111. Mercantile agencies, to customers generally. Taylor v. Church, 8 N. Y. 452; Sunderlin v. Bradstreet, 46 id. 188. Scandalous pleading. Gilbert v. People, 1 Den. 41. Proceedings at execution. Sandford v. Bennett, 24 N. Y. 20. Accusing public officer. Hamilton v. Eno, 81 id. 116. See Eastwood v. Holmes, 1 Fost. & F. 347; Turnbull v. Bird, 2 id. 524. See 15 Law Mag. (N. S.) 216, 241; 1 Cr., M. & W. 193 See Byam v. Collins, 111 N. Y. 150; Van Wyck v. Aspinwall, 17 id. 190; Hunt v. Bennett, 19 id. 173; Halstead v. Nelson, 24 Hun, 395; Briggs v. Garrett, 111 Penn. St. 404; Root v. King, 7 Cow. 613; 4 Wend. 113; Edsall v. Brooks, 17 Abb. 221; Ackerman v. Jones, 5 J. & Sp. 42; McCabe v. Cauldwell, 18 Abb. 377; Stanley v. Webb, 4 Sandf. 21; Wood v. Wiman, 122 N. Y. 445, rev'g 47 Hun, 364.

§ **254. Threatening to publish libel.**—A person who threatens another with the publication of a libel, concerning the latter or concerning any parent, husband, wife, child or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort, money or other valuable consideration from any person, is guilty of a misdemeanor.

See §§ 553, 558, *post*.

§ **254 A. Furnishing libelous information.**—Any person who willfully states, delivers or transmits by any means whatever to the manager, editor, publisher or reporter of any newspaper, magazine, publication, periodical or serial for publication therein any libelous statement concerning any person or corporation and thereby secures the actual publication of the same, is guilty of a misdemeanor. [ADDED CH. 340 of 1890; in effect Sept. 1, 1890.]

TITLE X.

Of Crimes Against the Person and Against Public Decency and Good Morals.

CHAP. I. Crimes against religious liberty and conscience.
II Rape, abuction, carnal abuse of children, and seduction.
III. Abandonment and neglect of children.
IV. Abortions and concealing death of infant.
V. Bigamy, incest and the crime against nature.
VI. Violating sepulture and the remains of the dead.
VII. Indecent exposures, obscene exhibitions, books and prints, and disorderly houses.
VIII. Lotteries.
IX. Gaming.
X. Pawnbrokers.

CHAPTER I.

OF CRIMES AGAINST RELIGIOUS LIBERTY AND CONSCIENCE.

SEC. 255. Profane swearing defined.
256. Punishment of profane swearing.
257. Summary conviction for profane swearing.
258. Penalties, how collected.
259. The Sabbath.
260. Sabbath breaking.
261. Day defined.
262. Acts forbidden.
263. Servile labor.
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271. Remedy for maliciously serving process.
272. Compelling adoption of a form of belief.
273. Preventing performance of religious act.
274. Disturbing religious meetings.
275. Definition of the offense.
276. Processions and parades.
277. Theatrical and other performances.

§§ 255-258. [Repealed by ch. 384 of 1882.]

§ 259. The Sabbath.— The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

People v. Dennin, 35 Hun, 327; Dinsmore v. N. Y. Police, 12 Abb. N. C. 436; Lindenmuller v. People, 33 Barb. 548. See note to Swann v. Swann, 24 Am. L. Reg. (N. S.) 378, 394, and 18 Am L. Rev. 778, 795; Neuendorff v. Duryea, 69 N.Y. 577; Smith v. Wilcox, 24 id. 353; People v. Ball, 42 Barb. 324; People v. Hoym, 20 How. 76; Andrews v. Bible Society, 4 Sandf. 156; People v. Ruggles, 8 Johns. 210; McPherson v. Chebause, 114 Ill. 46; Com. v. Has, 122 Mass. 40; Matter of Burke, 59 Cal. 6; Vidal v. Girard's Ex'rs, 2 How. (U. S.) 127.

§ 260. Sabbath breaking. — A violation of the foregoing prohibition is Sabbath breaking.

Corporation may be indicted for. State v. Balt. & O. R., 29 Alb. L. J. 38. See Anonymous, 12 Abb. N. C. 457.

§ 261. "Day" defined.—[Repealed by ch. 677 of 1892.]

§ 262. [Repealed by ch. 358 of 1883.]

§ 263. Servile labor. — All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community. [AMD. CH. 358 of 1883.]

Work of necessity. Morris v. State, 31 Ind. 189; State v. Goff, 20 Ark. 289. See §§ 263, 265, 267, 268, *post*; Eberle v. Mehrbach, 55 N. Y. 682; People v. Lyons, 5 Hun, 643; Brunnett v. Clark, 1 Sheld. 50; Sun, etc., Association v Tribune Association, 12 J. & Sp. 136; Brooklyn v. Toynbee, 31 Barb. 282. See Merrit v. Earle, 29 N. Y. 122; Dinsmore v. Board, etc., 12 Abb. N. C. 437; Batsford v. Every, 44 Barb. 618; Miller v. Roessler, 4 E. D. Smith, 234; Bilordeaux v. Lithographic Co., 30 N. Y. State Rep'r, 656; 9 N. Y. Supp. 507; State v. Railroad Co., 28 W. Va. 783.

§ 264. Persons observing another day as a Sabbath. — It is a sufficient defense to a prosecution for work or labor on the first day of the week, that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time. [AMD. CH. 519 of 1885.]

Maxon v. Annas, 1 Denio, 204; Anonymous, 12 Abb. N. C. 457; Isaacs v. Beth, etc., Soc., 1 Hilton, 469; Johns v. State, 78 Ind. 332; Com. v. Has, 122 Mass. 40; City of Shreveport v. Levy, 26 La. Ann. 671; Scales v. State, 47 Ark. 476; Swann v. Swann, 21 Fed. Rep'r, 299.

§ 265. Public sports. — All shooting, hunting, fishing, playing, horse racing, gaming or other public sports, exercises or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited. [AMD. CH. 358 of 1883.]

People v. Dennin, 35 Hun, 327; 3 N. Y. Cr. 128.

§ 266. Trades, manufactures and mechanical employments. — All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community. [AMD. CH. 358 of 1883.]

Manhattan I. Works Co. v. French, 12 Abb. N. C. 448; Sanders v. Staten I. R. Co., 13 Abb. (N. S.) 355; Anonymous, 12 Abb. N. C. 458; Com. v. Dextra, 143 Mass. 28; State v. Federich, 45 Ark. 347; People v. Lyons, 5 Hun, 643; Yonoski v. State, 79 Ind. 393; Wilkinson v. State, 59 id. 416; Com. v. Louisville, etc., R. Co., 80 Ky. 291; Phil., etc., R. Co. v. Lehman, 56 Md. 209; Muller v. State, 76 Ind. 310; Phelps v. Board, etc., 5 Law Bull. 13; Hennersdorf v. State, 11 Cr. L. Mag. 179.

§ 267. Public traffic. — All manner of public selling or offering for sale of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco in places other than where spirituous or malt

liquors or wines are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day. [AMD. CH. 358 of 1883.]

Boynton v. Page, 13 Wend. 425; Anonymous, 12 Abb. N. C. 458; State v. Ohmer, 11 Cr. L. Mag. 378.

§ 268. **Serving process on Sunday prohibited.**— All service of legal process of any kind whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatever. [AMD. CH. 622 of 1892. In effect June 6, 1892.]

See § 2015 of Code of Civ. Proc.; Hastings v. Farmer, 4 N. Y. 296; Butler v Kelsey, 15 Johns. 177; Van Vechten v. Paddock, 12 id. 178.

§ 269. **Sabbath breaking.** — Sabbath breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days. [AMD. CH. 535 of 1887.]

§ 270. **Forfeiture of commodities exposed for sale.**—In addition to the penalty imposed by the last section, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this chapter shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by a mayor, recorder or alderman of a city, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city. [AMD. CH. 358 of 1883.]

§ 271. **Remedy for maliciously serving process.**—Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Maxson v. Annas, 1 Den. 204.

§ 272. **Compelling adoption of a form of belief.**—An attempt by means of threats or violence, to compel any person to adopt, practice or profess a particular form of religious belief, is a misdemeanor.

See § 3, art. 1 of State Const.; first amendment, Fed. Const.

§ 273. **Preventing performance of religious act.**—A person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

§ 274. **Disturbing religious meetings.**— A person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

See §§ 448, 650, *post;* Wall v. Lee, 34 N. Y. 141; People v. Brown, 1 Wh. Cr. C. 124; People v. Crowley, 23 Hun, 412; People v. Degey, 2 Wh. Cr. C. 135; State v. Smith, 5 Harring, 490. Bad singing. State v. Linkhaw, 69 N. C. 214; S. C., 1 Green's Cr. R. 488; State v. Jasper, 4 Dev. 323; First Bapt. Ch. v. Utica & S. R. Co., 6 Barb. 319; Foster v. Smith, 10 Wend. 377; Farren v. Warren, 3 id. 253; Becket v. Lawrence, 7 Abb. (N. S.) 403.

§ 275. **Id.; definition of the offense.**— The following acts, or any of them, constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting;

2. Engaging in, or promoting, within two miles of the place where a religious meeting is held, any racing of animals or gaming of any description;

3. Obstructing in any manner, without authority of law, within the like distance, free passage along a highway to the place of such meeting.

People v. Crowley, 23 Hun, 412; State v. Linkhaw, 69 N. C. 214; Lancaster v. State, 53 Ala. 398; Brown v. State, 46 id. 175; Wood v. State, 11 Tex. App. 318; Hunt v. State, 3 id. 116; State v. Edwards, 32 Mo. 550; Jenning's case, 3 Gratt. 624; Hollingsworth v. State, 5 Sneed, 518; Williams v. State, 3 id. 313; Layne v. State, 4 Lea, 199; Cockreham v. State, 7 Humphreys, 11.

§ 276. **Processions and parades. Punishment.**— All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fire-works, discharge of cannon or fire-arms, or other disturbing noise. At a military funeral, and at the burial of a national guardsman or of a deceased member of an association of veteran soldiers, or of a disbanded militia regiment, music may be played while escorting the body, but not, within one block of a place of worship where service is then celebrated.

A person willfully violating any provision of this section is punishable by fine not exceeding twenty dollars, or imprisonment not exceeding ten days, or by both. [AMD. CH. 358 of 1883. Ch. 302 of 1883 also amends this section, but was amended as above.]

§ 277. **Theatrical and other performances.**— The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, wrestling, boxing with or without gloves, sparring contest, trial of strength, or any part or parts therein, or any circus, equestrian, or dramatic performance or exercise, or any performance or exercise of jugglers, acrobats, club performances or ropedancers, on the first day of the week, is forbidden; and every person aiding in such exhibition, performance or exercise, by advertisement, posting or otherwise, and every owner or lessee of any garden, building or other room, place or structure, who leases or lets the same for the purpose of any such exhibition or performance or exercise, or who

assents to the use of the same for any such purpose, if it be so used, is guilty of a misdemeanor.

In addition to the punishment therefor provided by statute, every person violating this section is subject to a penalty of five hundred dollars; which penalty "The Society for the Reformation of Juvenile Delinquents" in the city of New York, for the use of that society, and the overseers of the poor in any other city or town, for the use of the poor, are authorized, in the name of the people of this state, to recover. Besides this penalty, every such exhibition, performance or exercise, of itself, annuls any license which may have been previously obtained by the manager, superintendent, agent, owner or lessee, using or letting such building, garden, room, place or other structure, or consenting to such exhibition, performance or exercise. [AMD. CH. 358 of 1883.]

Constitutional. Neuendorf v. Duryea, 69 N. Y. 557; S.C., 6 Daly, 276.

CHAPTER II.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SEC. 278. Rape defined.
279. When physical ability must be proved.
280. Penetration sufficient.
281. Compelling woman to marry.
282. Abduction.
283. No conviction on certain testimony.
284. Seduction under promise of marriage.
285. Subsequent marriage.
286. No conviction on certain testimony.

§ 278. **Rape defined.**—A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent, or,

1. When through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent, or, by reason of mental or physical weakness, or immaturity, or any bodily ailment, she does not offer resistance; or,

2. When her resistance is forcibly overcome; or,

3. When her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor, or weakness of mind produced by an intoxicating, or narcotic, or anæsthetic agent; or, when she is known by the defendant to be in such state of stupor or weakness of mind from any cause; or,

5. When she is, at the time, unconscious of the nature of the act, and this is known to the defendant; or when she is in custody of the law, or of any officer thereof, or in any place of lawful detention, temporary or permanent, is guilty of rape in the first degree and punishable by imprisonment for not more than twenty years. A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of sixteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years. [AMD. CH. 325 of 1892. In effect September 1, 1892.]

See latter part of amending act in § 303, *post*.

See § 218, sub. 2, *supra*. Rape. Force. Walter v. People, 50 Barb. 144. Resistance. People v. Dohring, 59 N. Y. 374; State v. Burgdorf, 58 Mo. 65; Strang v. People, 24 Mich. 1. Insensibility. People v. Quinn, 50 Barb. 128. By fraud. People v. Bartow, 1 Wh. Cr. C. 378. Incest is merged in rape. People v. Harriden, 1 Park. 344. No felonious assault in case of consent. People v. Persons, 2 N. Y. Cr. 114; People v. Bransby, 32 N. Y. 525; State v. Niles, 47 Vt. 82. Consent. State v. Hartigan, 32 Vt. 607, Hull v. State, 22 Wis. 580; People v. Jackson, 3 Park. 391; Woodin v. People, 1 id. 464; People v. Abbott, 19 Wend. 191, 201. Proof of character of prosecutrix admissible. Brennan v. People, 7 Hun, 171; and may be contradicted as to other acts, id. Indictment. People v. Draper, 28 Hun, 1.

Sub. 1. People v. Stamford, 2 Wh. Cr. C. 152; Singer v. People, 13 Hun, 418; Stephen v. State, 11 Ga. 225; State v. Farmer, 4 Ired. 224. Indictment. Singer v. People, 13 Hun, 418; 75 N. Y. 608.

Sub. 2. Reg. v. Fletcher, 8 Cox Cr. C. 131; Reg. v. Ryan, 2 id. 115; State v. Cron., 10 West. L. J. 501; McNamara's case, Oakley, 521.

Sub. 3. People v. Morrison, 1 Park. 625. Resistance necessary by child over ten years. People v. Dohring, *supra*; People v. C. S. S., 18 Hun, 330; Charles v. State, 6 Eng. 389; State v. Jim, 1 Den. 142; Pollard v. State, 2 Clarke, 567; Myatt v. State, 2 Swan, 394; Lewis v. State, 30 Ala. 54; State v. Blake, 39 Mo. 322; Barney v. People, 22 Ill. 160; People v. Clemons, 37 Hun, 580.

Sub. 4. Pleasant v. State, 8 Eng. 360; Wright v. State, 4 Humph. 194; Reg. v. Hallett, 9 Car. & P. 748; Reg. v. Day, id. 722; Croghan v. State, 22 Wis. 444; Wright v. State, 4 Humph. 194.

Sub. 5. People v. Quinn, *supra*; Reg. v. Camplin, 1 Cox Cr. C. 220; Whart. & Stille Med. Jur., §§ 441–443.

Sub. 6. Anon., 1 Wh. Cr. C. 381, n. See People v. Bartow, *supra*. See Gordhon's case, 3 C. H. Rec. 91; People v. Quinn, *supra*; Walter v. People, 50 Barb. 144 See People v. Connor, 31 N. Y. State Rep'r, 168; People v. Bowles, 3 N. Y. Cr. 447; People v. Clemons, id. 565; Gongleman v. People, 3 Park. 15; People v. O'Sullivan, 104 N. Y. 481; Higgins v. People, 1 Hun, 307; aff'd, 58 N. Y. 377; People v. Crowley, 102 id. 234; People v. Batterson, 50 Hun, 46; Baccio v. People, 41 N. Y. 265; People v. Stott, 5 N. Y. Cr. 61; Zophi v. Smith, 55 Hun, 551; Woodin v. People, 1 Park. 464; Conkey v. People, 5 id. 31; 1 Abb. Dec. 418; Higgins v. People, 58 N. Y. 377; Woods v. People, 55 id. 515; Brennan v. People, 7 How. 171; Hays v. People, 1 Hill, 351; People v. Maxon, 57 Hun, 367; 32 N. Y. State Rep'r, 132; People v. Aldrich, 33 id. 790; Com. v. Burke, 105 Mass. 376; People v Connor, 37 N. Y. State Rep'r, 25, aff'g 31 id. 162; People v. De Leon, 109 N. Y. 230; People v. Draper, 28 Hun, 1; People v. Zimmerman, 1 N. Y. State Rep'r, 468; People v. Clark, 3 N. Y. Cr. 280; Stephens v. State, 34 Alb. L. J. 228.

§ 279. **When physical ability must be proved.** — No conviction for rape can be had against one who was under the age of fourteen years, at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, beyond a reasonable doubt.

People v. Randolph, 2 Park. 174. Child under fourteen cannot be convicted of assault with intent to rape, unless ability proved. See Williams v. State, 14 Ohio, 222; People v. Croucher, 2 Wheeler Cr. Cases, 42; Wagoner v. State, 5 Lea, 352; 40 Am. Rep. 36; Hiltabiddle v. State, 35 Ohio, 52; 35 Am. Rep. 595. See 10 Cr. L. Mag. 89.

§ 280. **Penetration sufficient.** — Any sexual penetration, however slight, is sufficient to complete the crime.

People v. Crowley, 102 N. Y. 237; 4 N. Y. Cr. 168; Taylor v. State, 111 Ind. 279; Brown v. State, 76 Ga. 623. See 80 Am. Dec. 361.

§ 281. **Compelling woman to marry.** — A person who by force, menace or duress, compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for a term not exceeding ten years, or by a fine of not more than one thousand dollars, or by both.

See § 282, subd. 3, *post*. Fraud unattended by force or intent to use force, not rape. Walter v. People, 50 Barb. 144. See Beyer v. People, 86 N. Y. 369; Schnicker v. People, 88 id. 192.

§ 282. Abduction. — A person who,

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of sixteen years, for the purpose of prostitution; or, not being her husband, for the purpose of sexual intercourse; or without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or

3. Takes or detains a female unlawfully against her will, with the intent to compel her, by force, menace, or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian or other person having legal charge of the person of a female under the age of sixteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse;

Is guilty of abduction, and punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both. [AMD. CH. 46 of 1884, and CH. 31 of 1886.]

See § 281, *supra*. Recommending female to house of prostitution. Wittenburgh's case, 3 C. H. Rec. 49. Actual chastity must be proved. Kauffman v. People, 11 Hun, 82; Carpenter v. People, 8 Barb. 603; People v. Parshall, 6 Park. 129. Purpose of prostitution as well as taking must be shown. People v. Plath, 100 N. Y. 590, rev'g 36 Hun, 454.

Sub. 1. Reg. v. Monkletow, 6 Cox Cr. C. 143; Reg. v. Kipps, 4 id. 167; Reg. v. Frazer, 8 id. 446; Reg. v. Biswell, 2 id. 279; Reg. v. Timmons, 8 id. 401; Reg. v. Tinkler, 1 Fost. & F. 513. Legal charge of person. State v. Ruhl, 8 Clarke, 447; People v. Seeley, 37 Hun, 190; Moot v. Moot, id. 288.

Sub. 2. Unchastity, character of, how proved. People v. Kane, 14 Abb. Pr. 15; Crozier v. People, 1 Park. 453; People v. Kenyon, 5 id. 254. See Conkey v. People, id. 431; People v. Sheppard, 44 Hun, 555; 5 N. Y. Cr. 136; Kenyon v. People, 26 N. Y. 203; 5 Park. 254; Schnicker v. People, 88 N. Y. 192; People v. Brandt, 110 id. 657; 14 N. Y. State Rep'r, 419; People v. Stott, 4 N. Y. Cr. 308; 5 id. 65; People v. Seeley, 101 N. Y. 642; People v. Powell, 4 N. Y. Cr. 590; People v. Gibson, 6 id. 390; 4 N. Y. Supp. 170; Slocum v. People, 90 Ill. 274; State v. George, 98 N. C. 567; People v. Carrien, 46 Mich. 442; People v. Cook, 61 Cal. 479; State v. Gordon, 46 N. J. L. 432; Lyons v. State, 52 Ind. 426; Safford v. People, 1 Park. 478; People v. Crotty, 30 N. Y. State Rep'r, 45.

§ 283. No conviction on certain testimony.—No conviction can be had for abduction, compulsory marriage, rape or defilement, upon the testimony of the female abducted, compelled or defiled, unsupported by other evidence. [AMD. CH. 663 of 1886.]

People v. Plath, 100 N. Y. 590; 4 N. Y. Cr. 53; People v. Crowley, 102 N. Y. 234; People v. Brandt, 110 id. 647; 14 N. Y. State Rep'r, 419; People v. O'Sullivan, 104 N. Y. 481; People v. Stott, 5 N. Y. Cr. 61; People v. Cullen, 23 N. Y. State Rep'r, 559; 5 N. Y. Supp. 886; People v. Powell, 4 N. Y. Cr. 586; Conkey v. People, 1 Abb. App. Dec. 418; Crandall v. People, 2 Lans. 309; Woodin v. People, 1 Park. 464; People v. Morris, 35 N. Y. State Rep'r, 942.

§ 284. Seduction under promise of marriage.—A person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Conditional promise of marriage sufficient. Kenyon v. People, 26 N. Y. 203; S. C., 5 Park. 254; Boyce v. People, 55 N. Y. 644. Defendant must have arrived at age of puberty, need not be of full age. People v. Kenyon, *supra*; Crozier v. People, 1 Park. 453. But see Cook v. People, 2 S. C. 404. If known

that defendant was a married man, no offense. People v. Alger, 1 Park. 333. Mutual promise on part of complainant is implied. People v. Kenyon, *supra;* People v. Kane, 14 Abb. Pr. 15. Existence of pregnancy not essential to conviction. Cook v. People, 2 S. C. 404. Previous chaste character presumed. People v. Kane, 14 Abb. Pr. 15. Character of promise. People v. Alger, *supra;* Crozier v. People, *supra;* State v. Bierce, 27 Conn. 319. Unmarried female. West v. State, 1 Wis. 209. Chaste character. Carpenter v. People, 8 Barb. 603; Safford v. People, 1 Park. 474; Andre v. State, 5 Clarke, 389; Boak v. State, id. 430; Wood v. State, 48 Ga. 192. See Kauffman v. People, 11 Hun, 82. Unchastity, how proved. People v. Kane, 14 Abb. Pr. 15; Conkey v. People, 5 Park. 431; People v. McArdle, id. 180; Crandall v. People, 2 Lans. 309; People v. Kane, 14 Abb. 15; People v. Eckert, 2 N. Y. Cr. 470. See People v. Hustis, 32 Hun, 58; 2 N. Y. Cr. 448; People v. Johnson, 104 N. Y. 213; 5 N. Y. Cr. 218, aff'g 4 id. 591; Reynolds v. People, 41 How. 179; State v. Prizer, 49 Iowa, 531; State v. Higdom, 32 id. 262; Callahan v. State, 63 Ind. 198; Oliver v. Com., 101 Penn. St. 215; People v. De Fore, 64 Mich. 693; Zabriskie v. State, 43 N. J. L. 640; Polk v. State, 40 Ark. 482; People v. Roderigas, 49 Cal. 9; People v. Squires, 49 Mich. 487; Patterson v. Hayden, 17 Ore. 238; Croghan v. State, 22 Wis. 444; People v. Crotty, 30 N. Y. State Rep'r, 45; People v. Kearney, 110 N. Y. 188, rev'g 47 Hun, 129.

§ 285. **Subsequent marriage.** — The subsequent intermarriage of the parties, or the lapse of two years after the commission of the offense before the finding of an indictment, is a bar to a prosecution for a violation of the last section.

See People v. Millspaugh, 11 Mich. 278.

§ 286. **Complainant must be corroborated.** — No conviction can be had for the offense specified in section 284, upon the testimony of the female seduced, unsupported by other evidence.

See § 399, Code Cr. Proc.; Armstrong v. People, 70 N. Y. 38. Corroboration must be as to promise and intercourse, not as to chastity or being unmarried. People v. Kenyon, 5 Park. 254. Nature of corroborative evidence necessary. Boyce v. People, 55 N. Y. 644; Crozier v. People, 1 Park. 453; People v. Lomax, 6 Abb. Pr. 139; People v. Hine, 2 Edm. S. C. 110; People v. Kearney, 110 N. Y. 188, rev'g 47 Hun, 129; Crandall v. People, 2 Lans. 309; Cook v. People, 2 Th. & C. 404; People v. Alger, 1 Park. 333; State v. Araah, 55 Iowa, 250; State v. Patterson, 88 Mo. 88; State v. Brassfield, 81 id. 151; State v. Brinkhans, 7 Cr. L. Mag. 343; People v. Jensen, 33 N. W. Rep'r, 811; State v. Hill, 4 S. W. Rep'r, 121; Rice v. Com., 100 Penn. St. 28.

CHAPTER III.

ABANDONMENT AND OTHER ACTS OF CRUELTY TO CHILDREN.

SEC. 287. Abandonment of child under six years.
288. Unlawfully omitting to provide for child.
289. Endangering life, health or morals of child.
290. Keepers of concert saloons, etc.
291. Children not to beg, etc.
292. Certain employment of a child.
293 Duty of officers of society.

§ 287. **Abandonment of child under six years.** — A parent, or other person having the care or custody, for nurture or education, of a child under the age of six years, who deserts the child in any place, with intent wholly to abandon it, is punishable by imprisonment in a state prison, for not more than seven years. [AMD. CH. 325 of 1892. In effect September 1, 1892.]

See latter part of amending act in § 303, *post.*

Reg. v. Chandler, 1 Jur. (N. S.) 429; Reg. v. Gray, 7 Cox Cr. C. 326; Reg. v. S., 5 id 279; Reg. v. Philpot, 6 id. 140. Custodian. State v. Ruhl, 8 Iowa, 447. See People, *ex rel.* Douglass, v. Naehr, 30 Hun, 461; Bayne v. People, 14 id. 181.

§ 288. Omitting to provide for child.—A person who,

1. Willfully omits, without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter or medical attendance to a minor, or to make such payment toward its maintenance as may have been required by the order of a court or magistrate when such minor has been committed to an institution; or,

2. Not being a superintendent of the poor, or a superintendent of alms-houses, or an institution duly incorporated for the purpose, without having first obtained a license in writing so to do from the board of health of the city or town wherein such females or children are received, boarded or kept, erects, conducts, establishes or maintains any maternity hospital, lying-in asylum where females may be received, cared for or treated during pregnancy, or during or after delivery; or receives, boards or keeps any nursing children, or any children under the age of twelve years not his relatives, apprentices, pupils or wards without legal commitment; or,

3. Being a midwife, nurse or other person having the care of an infant within the age of two weeks neglects or omits to report immediately to the health officer or to a legally qualified practitioner of medicine of the city, town or place where such child is being cared for, the fact that one or both eyes of such infant are inflamed or reddened whenever such shall be the case, or who applies any remedy therefor without the advice, or except by the direction of such officer or physician; or,

4. Neglects, refuses or omits to comply with any provisions of this section, or who violates the provisions of such license, is guilty of a misdemeanor. Every such license must specify the name and residence of the person so undertaking the care of such females or children, and the place and the number of females or children thereby allowed to be received, boarded and kept therein, and shall be revocable at will by the authority granting it. Every person so licensed must keep a register wherein he shall enter the names and ages of all such children and of all children born on said premises, and the names and residences of their parents, as far as known, the time of the reception and discharge of such children and the reasons therefor, and also a correct register of the name and age of every child under the age of five years who is given out, adopted, taken away or indentured from such place to or by any one, together with the name and residence of the person so adopting, taking or indenturing such child; and shall cause a correct copy of such register to be sent to the authority issuing such license within forty-eight hours after such child is so given out, adopted, taken away or indentured. It shall be lawful for the officers of any incorporated society for the prevention of cruelty to children and of such board of health at all reasonable times to enter and inspect the premises wherein such females and children are so boarded, received or kept, and also such license, register and the children. [AMD. CHS. 46 of 1884; 81 of 1886; 145 of 1888; 325 of 1892. In effect September 1, 1892.]

See latter part of amending act in § 303, *post*. Fursman v. Van Sise, 56 N. Y. 435, 444; Crowley v. People, 21 Hun, 415; 83 N. Y. 464; Cromwell v. Benjamin, 41 Barb. 558; Kelly v. Davis, 49 N. H. 176; Dedham v. Natick, 16 Mass. 140; People v. McDonald, 49 Hun, 69.

§ 289. Endangering life, etc., of child.—A person who,

1. Willfully causes or permits the life or limb of any child actually

or apparently under the age of sixteen years to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Willfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired; is guilty of a misdemeanor. [AMD. CH. 145 of 1888.]

Who is custodian. Officer of benevolent institution. Cowley v. People, 11 W. Dig. 516; 83 N. Y. 464.

§ 290. **Permitting children to attend certain resorts.** — A person who,

1. Admits to or allows to remain in any dance-house, concert saloon, theatre, museum, skating rink, or in any place where wines or spirituous or malt liquors are sold or given away, or in any place of entertainment injurious to health or morals, owned, kept or managed by him in whole or in part, any child actually or apparently under the age of sixteen years, unless accompanied by its parent or guardian; or,

2. Suffers or permits any such child to play any game of skill or chance in any such place, or in any place adjacent thereto, or to be or remain therein, or admits to or allows to remain in any reputed house of prostitution or assignation, or in any place where opium or any preparation thereof is smoked, any child actually or apparently under the age of sixteen years; or,

3. Sells or gives away, or causes or permits or procures to be sold or given away to any child actually or apparently under the age of sixteen years any beer, ale, wine, or any strong or spirituous liquor; or,

4. Being a pawnbroker or person in the employ of a pawnbroker, makes any loan or advance or permits to be loaned or advanced to any child actually or apparently under the age of sixteen years any money, or in any manner directly or indirectly receives any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever; or,

5. Sells, pays for or furnishes any cigar, cigarette or tobacco in any of its forms to any child actually or apparently under the age of sixteen years;

Is guilty of a misdemeanor. [AMD. CHS. 46 of 1884; 31 of 1886, and 170 of 1889.]

7. No child actually or apparently under sixteen years of age shall smoke or in any way use any cigar, cigarette or tobacco in any form whatsoever in any public street, place or resort. A violation of this subdivision shall be a misdemeanor, and shall be punished by a fine not less than two dollars for each offense. [ADDED CH. 417 of 1890. In effect September 1, 1890.]

§ 291. **Children not to beg, etc.** — Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or under any pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or

2. Not having any home or other place of abode or proper guardianship; or who has been abandoned or improperly exposed or neg-

lected, by its parents or other person or persons having it in charge, or being in a state of want or suffering; or

3. Destitute of means of support, being an orphan, or living or having lived with or in custody of a parent or guardian who has been sentenced to imprisonment for crime, or who has been convicted of a crime against the person of such child, or has been adjudged an habitual criminal; or

4. Frequenting or being in the company of reputed thieves or prostitutes, or in a reputed house of prostitution or assignation, or living in such a house either with or without its parent or guardian, or being in concert saloons, dance-houses, theatres, museums or other places of entertainment, or places where wines, malt or spirituous liquors are sold, without being in charge of its parent or guardian; or playing any game of chance or skill in any place wherein or adjacent to which any beer, ale, wine or liquor is sold or given away, or being in any such place; or

5. Coming within any of the descriptions of children mentioned in section two hundred and ninety-two, must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child such as now is, or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitment shall, so far as practicable, be made to such charitable or reformatory institutions. Whenever any child shall be committed to an institution under this Code, and the warrant of commitment shall so state, and it shall appear therefrom that either parent, or any guardian or custodian of such child was present at the examination before such court or magistrate, or had such notice thereof as was by such court or magistrate deemed and adjudged sufficient, no further or other notice required by any local or special statute, in regard to the committal of children to such institution, shall be necessary, and such commitment shall in all respects be sufficient to authorize such institution to receive and retain such child in its custody as therein directed. Whenever any commitment of a child shall for any reason be adjudged or found defective, a new commitment of the child may be made or directed by the court or magistrate, as the welfare of the child may require. And no commitment of a child which shall recite therein the facts upon which it is based shall be deemed invalid by reason of any omission of the court or magistrate by whom such commitment is made to file any documents, papers or proceedings relating thereto, or by reason of any limitation as to the age of the child committed, contained in the act or articles of incorporation of the institution to which it may have been committed. [AMD. CHS. 31 of 1886; 145 of 1888.]

6. Any magistrate having criminal jurisdiction may commit, temporarily, to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years, who is held for trial on a criminal charge; and may, in like manner, so commit any such child held as a witness to appear on the trial of any criminal case; which institution shall thereupon receive the same,

and be entitled to the like compensation proportionally therefor as on final commitment, but subject to the order of the court as to the time of detention and discharge of the child. Any such child convicted of any misdemeanor shall be finally committed to some such institution, and not to any prison or jail, or penitentiary, longer than is necessary for its transfer thereto. No child under restraint or conviction, actually or apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any court-room, or in any vehicle for transportation in company with adults charged with or convicted of crime. [AMD. CH. 46 of 1884.]

7. All cases involving the commitment or trial of children for any violation of the Penal Code, in any police court or court of special sessions, may be heard and determined by such court, at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept. [ADDED BY CH. 217 of 1892. In effect Sept. 1, 1892.]

Ex parte Haller, 12 Hun, 131; People v. A. F. G. Soc., 1 How. Pr. (N. S.) 137; People, etc., v Cath. Protectory, 38 Hun, 127. See Code Cr. Proc., § 893; People v. N. Y. Cath. Protectory, 106 N. Y. 608; 5 N. Y. Cr. 499; 19 Abb. N. C. 142; 44 Hun, 526; Matter of Malony, 51 Hun, 372; 6 N. Y. Cr. 241; Matter of Donohue, 1 Abb. N. C. 1; Matter of Moses, 13 id. 189; 1 N. Y. Cr. 508; Matter of McMahon, 64 How. 285; People v. Mt. Mag. School, 28 N. Y. State Rep'r, 255; People v. Baker, 19 id. 489; People, *ex rel.* Brown, v. Carpenter, 32 id. 822; People, *ex rel.* Perkerson, v. Sisters, etc., 34 Hun, 463; 1 How. (N. S.) 132; 2 N. Y. Cr. 528; People v. Neilson, 16 Hun, 214; Matter of Hogan, 55 How. 458; People v. Moore, 3 Park. 465; Matter of Gray, 11 Abb. 56; Matter of Forbes, 19 How. 457; Matter of Roach, 18 W. Dig. 514; Matter of Riley, id. 515; People v. Degnen, 6 Abb. (N. S.) 87; 54 Barb. 105; Matter of Wright, 29 Hun, 357; People, *ex rel.* Tweed, v. Liscomb, 60 N. Y. 559; People v. Marchke, 2 N. Y. Cr. 168; Matter of Larson, 31 Hun, 589; Matter of Nichols, 4 N. Y. State Rep'r, 659; Matter of Forsyth, 66 How. 180; Matter of Coughlin, 62 id. 34; Matter of Williamson, 3 Abb. (N. S.) 244; Matter of Diss Debar, 3 N. Y. Supp. 667; People, *ex rel.* Downey, v. Dains, 38 Hun, 43; People, *ex rel.* McCarthy, v. French, 25 id. 111; People v. Keeper, etc., 37 How. 494; People v. Superintendent, etc., 8 Abb. (N. S.) 112; People, *ex rel.* Van Heck, v. N. Y. Cath. Protectory, 101 N. Y. 195; Matter of Jacobs, 2 N. Y. Cr. 539; Matter of Heery, 51 Hun, 373; 21 N. Y. State Rep'r, 82; People, *ex rel.* Mt. M. School, v. Dickson, 57 Hun, 314; 32 N. Y. State Rep'r, 406; People, *ex rel.* Brown, v. Carpenter, 33 id. 1029.

§ 292. **Certain employments of child prohibited.**—A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer, or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting, either

1. As a rope or wire walker, gymnast, wrestler, contortionist, rider or acrobat; or upon any bicycle or similar mechanical vehicle or contrivance; or,

2. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or in peddling; or

3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in any wandering occupation; or,

4. In any illegal, indecent or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child, is guilty of a misdemeanor. But this section does not apply to the employment of any child as a singer or musician in a church, school or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours previous notice of the application shall have been served in writing upon the society mentioned in section two hundred and ninety-three of the Penal Code, if there be one within the county, and a hearing had thereon if requested, and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residence of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivisions of this section. [AMD. CH. 46 of 1884; CH. 31 of 1886; CH. 309 of 1892. In effect September 1, 1892.]

Ryan v. Buchanan, 37 Hun, 425; Society, etc., v. Diers, 10 Abb. (N. S.) 216; Matter of Donohue, 1 Abb. N. C. 1; Matter of Corinne, Daily Reg., Dec. 16, 1881; People, *ex rel.* Mt. M. School, v. Dickson, 57 Hun, 314; 32 N. Y. State Rep'r, 496.

§ 293. **Duty of officers of society.**—A constable or police officer must, and any agent or officer of any incorporated society for the prevention of cruelty to children may, arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this chapter and any minor coming within any of the descriptions of children mentioned in section two hundred and ninety-one, or in section two hundred and ninety-two. Such constable, police officer or agent may interfere to prevent the perpetration in his presence of any act forbidden by this chapter. A person who obstructs or interferes with any officer or agent of such society in the exercise of his authority under this chapter, is guilty of a misdemeanor. All fines, penalties and forfeitures imposed or collected for a violation of the provisions of this Code or of any act relating to or affecting children, now in force or hereafter passed, must be paid on demand to the incorporated society for the prevention of cruelty to children in every case where the prosecution shall be instituted or conducted by such a society; and any such payment heretofore made to any such society may be retained by it. [AMD. CH. 145 of 1888.]

See Code Cr. Proc., § 56; People, *ex rel.* N. Y. S. P. C. C., v. Gilmore, 88 N. Y. 626; Davis v. Society, etc., 16 Abb. (N. S.) 73; People v. Strickland, 13 Abb. N. C. 473; Matter of Corinne, Daily Reg., Dec. 16, 1881.

CHAPTER IV.

ABORTION AND CONCEALING DEATH OF INFANT.

SEC. 294. Abortion defined.
295. Killing of child in attempting miscarriage.
296. Concealing birth.
297. Selling drugs, etc.

§ **294. Abortion defined.** — A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug or substance; or

2. Uses, or causes to be used, any instrument or other means;

Is guilty of abortion, and is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

See § 191, *supra*; § 318, *infra*. Medicine need not be taken. State v. Murphy, 3 Dutch. 112. Prisoner need not be present at taking. Reg. v. Wilson, 1 Dears. & B. 127. See Reg. v. Farrow, 40 Eng. L. & Eq. 550; Reg. v. Fretwell, 9 Cox Cr. C. 152. See State v. Howard, 32 Vt. 380; People v. Davis, 56 N. Y. 95; Frazer v. People, 54 Barb. 306; Lohman v. People, 1 N. Y. 383; Hunt v. People, 3 Park. 569; People v. Stockham, 1 id. 424; Mongeon v. People, 55 id. 613; S. C., 2 T. & C. 128; Davis v. People, id. 212; Evans v. People, 49 N. Y. 86, 87; Watson v. State (Tex.), 23 Alb. L. J. 318. Woman who submits is not an accomplice. People v. Vedder, 98 N. Y. 630. Participants conspirators. People v. Murphy, 22 W. Dig. 145; 101 N. Y. 126; People v. Bliven, 112 id. 81; 20 N. Y. State Rep'r, 486; Bradford v. People, 20 Hun, 309; Swan v. People, 13 W. Dig. 518; People v. Meyers, 5 N. Y. Cr. 121; 7 N. Y. State Rep'r, 217; State v. Fitzgerald, 49 Iowa, 260; Com. v. Drake, 124 Mass. 21; State v. Harper, 35 Ohio St. 78; Railing v. Com., 110 Penn. St. 100; Montgomery v. State, 80 Ind. 338; People v. Phelps, 39 N. Y. State Rep'r, 598.

§ **295. Killing of child in attempting miscarriage.**— A pregnant woman, who takes any medicine, drug or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment for not less than one year, nor more than four years.

Defendant to justify use of instrument. Bradford v. People, 20 Hun, 309. See Eckhart v. People, 22 Hun, 525; People v. Meyers, 7 N. Y. State Rep'r, 217; 5 N. Y. Cr. 126; People v. Vedder, 98 N. Y. 630; 34 Hun, 281; 3 N. Y. Cr. 29. See §§ 190, 191, 194, *ante*.

§ **296. Concealing birth.** — A person who endeavors to conceal the birth of a child, by any disposition of the dead body of the child, whether the child died before or after its birth, is guilty of a misdemeanor.

See § 693, *post*. Reg. v. Bird, 2 Carr. & K. 817; Reg. v. Goode, 6 id. 318; Reg. v. Barriman, id. 388; Reg. v. ——, id. 391; Reg. v. Perry, id. 351; Reg. v. Opie, 8 Cox Cr. C. 332.

§ **297. Selling drugs, etc.** — A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

See § 191, *supra*; §§ 318, 321, *post*.

CHAPTER V.

BIGAMY, INCEST AND THE CRIME AGAINST NATURE.

SEC. 298. Bigamy defined; how punished.
299. Id.; exceptions.
300. Indicting for bigamy.
301. Punishment of consort.
302. Incest.
303. Sodomy.
304. Penetration sufficient.

§ 298. **Bigamy defined; how punished.**— A person who, having a husband or a wife living, marries another person, is guilty of bigamy, and is punishable by imprisonment in a penitentiary or state prison for not more than five years.

Second marriage out of state. People v. Mosher, 2 Park. 195. What a sufficient marriage. Hayes v. People, 25 N. Y. 390; S. C., 5 Park. 325. No offense unless second marriage took place within state. People v. Mosher, *supra;* McReynolds v. State, 5 Cold. (Tenn.) 18. After divorce. Baker v. People, 2 Hill, 325; Gahagan v. People, 1 Park. 378; Fleming v. People, 27 N. Y. 329, 331; People v. Baker, 76 id. 78; People v. Faber, 92 id. 146; S. C., 29 Hun, 320, overruling People v. Hovey, 5 Barb. 117. Void marriage. People v. Chase, 27 Hun, 256; 28 id. 310. Advice of counsel. People v. Weed, 29 Hun, 628; aff'd, 96 N. Y. 625; Van Voorhis v. Brintnall, 86 id. 18; Thorp v. Thorp, 90 id. 602; Moore v. Hegeman, 92 id. 521; People v. Merrill, 2 Park. 590; People v. Chase, 28 Hun, 310; 16 W. Dig. 143; Van Pelt's case, 1 C. H. Rec. 137; Steer's case, 2 id. 111; Coleman's case, 6 id. 3; Phelan's case, id. 91; People v. Humphrey, 7 Johns. 314; People v. Whigham, 1 Wheeler Cr. Cases, 115; Price v. Price, 124 N. Y. 596; 37 N. Y. State Rep'r, 147.

§ 299. **Id.; exceptions.**— The last section does not extend,

1. To a person whose former husband or wife has been absent for five years successively then last past, without being known to him or her within that time to be living, and believed by him or her to be dead; or

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of competent jurisdiction, for a cause other than his or her adultery; or

3. To a person who being divorced for his or her adultery has received from the court which pronounced the divorce, permission to marry again; or

4. To a person whose former husband or wife has been sentenced to imprisonment for life.

Invalid foreign divorce, no defense to indictment for bigamy. People v. Baker, 76 N. Y. 78; Eagle's case, 3 Abb. Pr. 224

Sub. 1. Van Pelt's case, 1 C. H. Rec. 137; Hull v. State (Tex.), 22 Alb. L. J. 38.

Sub. 2. Wait v. Wait, 4 N. Y. 95; People v. Faber, *supra;* Baker v. People, 2 Hill, 325.

See People v. Meyer, 8 N. Y. State Rep'r, 256; Fleming v. People, 27 N. Y. 329; Gallaghan v. People, 1 Park. 378; People v. Weed, 29 Hun, 628; 1 N. Y. Cr. 349; aff'd, 96 N. Y. 625; Cropsey v. Kinney, 30 Barb. 47; Queen v. Folsom, 40 Alb. L.J. 250; Price v. Price, 124 N. Y. 596; 37 N. Y. State Rep'r, 147.

§ 300. **Indicting for bigamy.**— An indictment for bigamy may be found in the county in which the defendant is arrested, and the like proceedings, including the trial, judgment, and conviction, may be had in that county, as if the offense were committed therein.

See § 376, *post*. Collins v. People, 1 Hun, 610; S. C., 4 S. C. 77; Houser v. People, 46 Barb. 33; King v. People, 5 Hun, 297; People v. Mosher, 2 Park. 195.

§ 301. **Punishment of consort.**—A person who knowingly enters into a marriage with another, which is prohibited to the latter by the foregoing provisions of this chapter, is punishable by imprisonment in a penitentiary or state prison, for not more than five years, or by a fine of not more than one thousand dollars, or both.

Sauser v. People, 8 Hun, 302; Blake v. Everman, 56 id. 454; 31 N. Y. State Rep'r, 355.

§ 302. **Incest.**—When persons, within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment for not more than ten years.

People v. Harriden, 1 Park. 344; State v. Schaumhurst, 34 Iowa, 547; People v. Murray, 14 Cal. 159; Chancellor v. State, 47 Miss. 278; Morgan v. State, 11 Ala. 289; Williams v. State, 2 Carter, 439; State v. Bullinger, 54 Mo. 142. Party cannot, by same act, commit both rape and incest. Iowa v. Thomas, 21 Alb. L. J. 498. See People v. Lake, 110 N. Y. 61; 10 N. Y. State Rep'r, 381; State v. Wegman, 59 Vt. 527; State v. Markins, 95 Ind. 464; Noble v. State, 22 Ohio St 541; Compton v. State, 13 Tex. App. 271; Johnson v. State, 20 id. 609; Freeman v. State, 11 id. 92; State v. Ellis, 74 Mo. 385; Howard v. State, 11 Ohio, 328.

§ 303. **Sodomy.**—A person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body is guilty of sodomy and is punishable with imprisonment for not more than twenty years.

This act shall take effect on the first day of September, eighteen hundred and ninety-two, but nothing herein contained applies to an offense committed or other act done at any time before the day when this act takes effect. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed in the same manner as if this act had not been passed. An offense specified in this act under its provisions, committed after the beginning of the day when this act takes effect, must be punished according to the provisions of this act and not otherwise. [AMD. CH. 31 of 1886; CH. 325 of 1892.]

§ 304. **Penetration sufficient.**—Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section.

See § 280, *ante*.

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

SEC. 305. Right to direct disposal of one's own body after death.
306. Duty of burial.
307. Burial in other states.
308. Dissection when allowed.
309. Unlawful dissection a misdemeanor.
310. Remains after dissection must be buried.
311. Body stealing.
312. Recovering stolen body.
313. Opening grave.
314. Arresting or attaching a dead body.
315. Disturbing funerals.

§ 305. **Right to direct disposal of one's own body after death.**—A person has the right to direct the manner in which his body shall be disposed of after his death; and also to direct the manner in which any part of his body, which becomes separated therefrom during his lifetime, shall be disposed of; and the provisions of this chapter do not apply to any case where a person has given directions for the disposal of his body or any part thereof inconsistent with those provisions.

Rowland v. Miller, 39 N. Y. State Rep'r, 117; 15 N. Y. Supp. 703.

§ 306. **Duty of burial.**—Except in the cases in which a right to dissect it is expressly conferred by law, every dead body of a human being, lying within this state must be decently buried within a reasonable time after death.

Rowland v. Miller, 39 N. Y. State Rep'r, 117; 15 N. Y. Supp. 703. See 10 Cent. L. J. 308, 325; Johnston v. Marinus, 18 Abb. N. C. 72; Rex v. Vantaudillo, 4 M. & S. 73; Wolcott v. Melick, 3 Stockt. 209; Clark v. Lawrence, 6 Jones Eq. (N. C.) 83; Barnes v. Hathon, 54 Me. 124. Windt v. German Ref. Ch., 4 Sandf. Ch. 471; Snyder v. Snyder, 60 How. 368, Patterson v. Patterson, 59 N. Y. 583; Copper's case, 58 How. 55; Rousseau v. City of Troy, 49 id. 492; Matter of Beekman St., 4 Bradf. 503; Dwenger v. Geary, 118 Ind. 113; Weld v. Walker, 130 Mass. 422.

§ 307. **Burial in other states.**—The last section does not impair any right to carry the dead body of a human being through this state, or to remove from this state the body of a person dying within it, for the purpose of burying the same elsewhere.

§ 308. **Dissection, when allowed.**—The right to dissect the dead body of a human being exists in the following cases:

1. In the cases prescribed by special statutes;
2. Whenever a coroner is authorized by law to hold an inquest upon the body, so far as such coroner authorizes dissection for the purposes of the inquest, and no further;
3. Whenever and so far as the husband, wife or next of kin of the deceased, being charged by law with the duty of burial, may authorize dissection for the purpose of ascertaining the cause of death, and no further.
4. Whenever any district attorney in this state, in the discharge of his official duties, shall deem it necessary, he may exhume, take possession of, and remove the body of a deceased person, or any portion thereof, and submit the same to a proper physical or chemical examination, or analysis, to ascertain the cause of death, and the same shall be made on the order of any justice of the supreme court of this state, or the county judge of the county in which such dead body shall be, which order shall be made on the application of the district attorney with or without notice to the relatives of the deceased person, or to any person or corporation having the legal charge of such body, as the court may direct. Said district attorney shall have power to direct the sheriff, constable or other peace officer in this state, or to employ such person or persons as he may deem necessary to assist him in exhuming, removing, obtaining possession of and examining physically or chemically such dead body or any portion thereof. The expense therefor shall be a county charge, to be paid by the county treasurer on the certificate of the district attorney. [AMD. CH. 500 of 1889.]

People v. Fitzgerald, 105 N. Y. 152; 5 N. Y. Cr. 335, rev'g 43 Hun, 35; Crisfield v. Perine, 15 id. 202; aff'd, 81 N. Y. 622.

§ 309. **Unlawful dissection a misdemeanor.** — A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

§ 310. **Remains after dissection must be buried.** — In all cases in which a dissection has been made, the provisions of this chapter, requiring the burial of a dead body, and punishing interference with or injuries to it, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

§ 311. **Body stealing.** — A person who removes the dead body of a human being, or any part thereof, from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is punishable by imprisonment for not more than five years, or by a fine not exceeding one thousand dollars, or both.

What constitutes. Tate v. State, 6 Blackf. 110; Rhodes v. Brandt, 21 Hun, 1; People v. Fitzgerald, 105 N. Y. 151; 59 Am. Rep. 483; 5 N. Y. Cr. 335; People v. Dalton, 58 Cal. 226.

§ 312. **Receiving stolen body.** — A person who purchases, or receives except for the purpose of burial, the dead body of a human being, or any part thereof, knowing that the same has been removed contrary to the last section, is punishable by imprisonment for not more than three years.

§ 313. **Opening grave.** — A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any part thereof, for the purpose of selling it or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the dead body, is punishable by imprisonment for not more than two years, or by a fine of not more than two hundred and fifty dollars or by both.

Rhodes v. Brandt, 21 Hun. 1; Coates v. New York City, 7 Cow. 585; Wynkoop v. Wynkoop, 42 Penn. St. 293; Craig v. Presbyterian Ch., 88 id. 42; Com. v. Cooley, 10 Pick. 39; Town of Lake View v. Rose Hill Cem. Co., 70 Ill. 191; Pierce v. Cem. Co., 10 R. I. 227.

§ 314. **Arresting or attaching a dead body.** — A person who arrests or attaches the dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

Rowland v. Miller, 39 N. Y. State Rep'r, 117; 15 N. Y. Supp. 703.

§ 315. **Disturbing funerals.** — A person who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a misdemeanor.

CHAPTER VII.

INDECENT EXPOSURES, OBSCENE EXHIBITIONS, BOOKS, AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

SEC. 316. Exposure of person.
317. Possessing, etc., obscene prints.
318 Indecent articles, etc.
319. Mailing, carrying obscene print, etc.
320. Warrant to sheriff to search, etc.
321. Physician's instruments.
322. Keeping disorderly houses, etc.

§ 316. **Exposure of person.**—A person who willfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another so to expose himself, is guilty of a misdemeanor.

What is a public place. People v. Bixby, 4 Hun, 636; 67 Barb. 221. Intent material. Miller v. People, 5 Barb. 203. Ill. See State v. Millard, 18 Vt. 574. Indecent exposure, what is. Com. v. Wardell (Mass.), 19 Alb. L. J. 135; 128 Mass. 52; 35 Am. Rep. 357; Van Houten v. State, 46 N. J. L. 16; 50 Am. Rep. 397; Reg. v. Willard, 36 Eng. Rep. 610.

§ 317. **Obscene prints.**—A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes or utters, or causes to be written, printed, published or uttered any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing named in this section can be purchased, obtained or had, or who

2. Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; or who

3. In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment, or be fined not less than fifty dollars nor more

than one thousand dollars, or both, for each offense. [AMD. CH. 380 of 1884; 692 of 1887.]

See § 297, *supra*; Willis v. Warren, 1 Hilt. 590. Evidence of sales of similar pictures by others, immaterial. People v. Muller, 19 W. Dig 256; 2 N. Y. Cr. 279; id. 375; 32 Hun, 209; aff'd, 96 N Y. 408; People v. Hallenbeck, 52 How. 502; United States v. Stenker, 32 Fed. Rep'r, 693; Same v. Bennett, 16 Blatchf, 338; State v. Brown, 27 Vt. 619; State v. Millard, 18 id. 574; Com. v. Holmes, 17 Mass. 336, Com. v. Landis, 8 Phila. 453; McNair v. People, 98 Ill. 441; State v. Pennington, 2 Lea, 506.

§ 318. **Indecent articles.**— A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section 317 of this Code. [AMD. CH. 692 of 1887.]

§ 319. **Mailing, carrying obscene print, etc.**— A person who deposits, or causes to be deposited, in any post-office within the state, or places in charge of an express company, or of a common carrier, or other person, for transportation, any of the articles or things specified in the last two sections, or any circular, book, pamphlet, advertisement, or notice relating thereto, with the intent of having the same conveyed by mail or express, or in any other manner, or who knowingly or willfully receives the same, with intent to carry or convey, or knowingly or willfully carries or conveys the same, by express, or in any other manner except in the United States mail, is guilty of a misdemeanor.

§ 320. **Warrant to sheriff to search, etc.**— A magistrate having jurisdiction to issue warrants in criminal cases, upon complaint that any person within his jurisdiction is offending against the provisions of this chapter, supported by oath or affirmation, must issue a warrant, directed to the sheriff or to any constable, marshal, or police officer within the county, directing him to search for, seize, and take possession of any of the articles specified in this chapter, in the possession of the person against whom complaint is made. The magistrate must immediately transmit every article seized by virtue of the warrant, to the district attorney of the county, who must, upon the conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had.

§ 321. **Physician's instruments.**—An article or instrument, used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this chapter. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this chapter.

§ 322. **Keeping disorderly houses.**—A person who keeps a house of ill-fame or assignation of any description, or a house or place for persons to visit for unlawful sexual intercourse, or for any lewd, obscene or indecent purpose, or disorderly house, or a house commonly known as a stale beer dive, or any place of public resort by which the peace, comfort, or decency of a neighborhood is habitually disturbed, or who, as agent or owner, lets a building or any portion of a building, knowing that it is intended to be used for any purpose specified in this section, or who permits a building or a portion of a building to be so used, is guilty of a misdemeanor This section shall be construed to apply to any part or parts of a house used for any of the purposes herein specified. [AMD. CH. 690 of 1887.]

See § 385, sub. 2, *post*. Jacobowsky v. People, 6 Hun, 524; S. C., 64 N. Y. 659; Barnesciotta v. People, 10 Hun, 37; S. C., 69 N. Y. 612; People v. Carey, 1 Sheld. 573; 4 Park. 238; Lowenstein v People. 54 Barb 299; People v. Erwin, 4 Den. 129; Abrahams v. State, 4 Iowa, 541; 6 id. 117; State v. Evans, 5 Ired. 603. What constitutes. People, *ex rel*. Van Houton, v. Sadler, 97 N. Y. 146; King v. People, 83 id. 590; 11 W. Dig. 392; People v. Miller, 38 Hun, 83; 3 N. Y. Cr. 480; People v. Manch, 24 How. 276; Lawton v. Steele, 119 N. Y. 239; Ely v. Supervisors, etc., 36 N. Y. 297; Moody v. Same, 46 Barb. 659; Arras v Richardson, 24 N. Y. State Rep'r, 743; 5 N. Y. Supp. 755; People v. Wallach, 39 N. Y. State Rep'r, 531; People v. Hulett, id. 646; Berry v. People, 1 N.Y. Cr. 43; Com. v. Hopkins, 133 Mass. 381; 43 Am. Rep. 527; State v. Boardman, 64 Me. 523; Herzinger v. State, 70 Md. 278; Com. v. Gannett, 1 Allen, 7; Henson v. State, 62 Md. 231; Sparks v. State, 59 Ala. 82; State v. Hanchett, 36 Conn. 35; Handy v. State, 63 Miss. 207; 56 Am. Rep. 803; State v. Dame, 60 N. H. 479; 49 Am. Rep. 331; State v. Smith, 29 Minn. 195; Com. v. Kimball, 7 Gray, 328; Wooster v. State, 55 Ala. 217; State v. Fletcher, 18 Mo. 425; Morris v. State, 38 Tex. 603; Mahalovitch v. State, 54 Ga 217; O'Brien v. People, 28 Mich. 213; State v. Wells, 46 Iowa, 662; State v. Brunell, 29 Wis. 435; People v. Berry, 1 N. Y. Cr. 43, 57.

See 10 Cr. L. Mag. 513; § 621, *post*; §§ 899 *et seq*. of Code of Crim. Proc.

CHAPTER VIII.

LOTTERIES.

SEC. 323. "Lottery" defined.
324. Lottery declared a public nuisance.
325. Contriving, drawing, etc., lottery.
326. Selling lottery tickets.
327. Advertising lotteries.
328. Offering property for disposal dependent upon the drawing of any lottery.
329. Keeping office, etc., for registry.
330. Insuring lottery tickets, etc.
331. Advertising offers to insure lottery tickets.
332. Property offered for disposal in lotteries, forfeited.
333. Letting building for lottery purposes.
334. Lotteries out of this state.
335. Advertisements by persons out of this state.

§ 323. **"Lottery" defined.**—A lottery is a scheme for the distribution of property by chance, among persons who have paid or agreed

to pay a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise or by some other name.

Baldwin's case, 3 C. H. Rec. 96; Gov. of Alms House v. Am. Art. Union, 7 N. Y. 228; Wooden v. Shotwell, 4 Zabr. 789; Bell v. State, 5 Sneed, 507. Lotteries, what are. Chavannah v. State, 49 Ala. 396; Randle v. State, 42 Tex. 580; State v. Clarke, 33 N. H. 329; State v. Shorts, 32 N. J. 398; Thomas v. People, 59 Ill. 160; Hull v. Ruggles, 56 N. Y. 424; People v. Runge, 3 N. Y. Cr. 85; People v. Noelke, 94 N.Y.137; 46 Am. Rep.128; 1 N. Y.Cr. 252, 495; Kohn v. Koehler, 96 N. Y. 367; 21 Hun, 466; 48 Am. Rep. 628; Wilkinson v. Gill, 74 N. Y. 63; 30 Am. Rep. 264; Rolfe v. Delmar, 7 Robt. 80; Negley v. Devlin, 12 Abb. (N. S.) 210; People v. Payne, 3 Den. 80; Matter of Shobert, 70 Cal. 632; 59 Am. Rep. 432; Com. v. Wright, 137 Mass. 250; 50 Am. Rep. 306; Grover v. Morris, 73 N. Y. 473; Almy v. McKinney, 5 N. Y. State Rep'r, 267; Hudelson v. State, 94 Ind. 426; 48 Am. Rep. 171; Buckalew v. State, 62 Ala. 334; 34 Am. Rep. 22; People v. Reilly, 50 Mich. 384; 45 Am. Rep. 47; People v. Elliott, 74 Mich. 264; 16 Am. St. 640; State v. Mumford, 73 Mo. 647; 39 Am Rep. 532; Kellowstone Kit v. State, 88 Ala. 196; 16 Am. St. 38; Holoman v. State, 2 Tex. App. 610; 28 Am. Rep. 439; People v. Dewey, 33 N. Y. State Rep'r, 427; People v. Gillson, 109 N. Y. 389.

§ 324. **Lottery declared a public nuisance.**—A lottery is unlawful and a public nuisance.

Art. 1, § 10, N. Y. Const. See § 385, *post*. Goodrich v. Houghton, 55 Hun, 529; 29 N. Y. State Rep'r, 907; People v. Dewey, 33 id. 427; People v. Gillson, 109 N. Y. 404; Stone v. State, 101 U. S. 814; New Orleans v. Houston, 119 id. 265; Moore v. State, 48 Miss. 147; 12 Am. Rep. 367; Matter of Blanchard, 9 Nev. 101.

§ 325. **Contriving, drawing, etc., lottery.**—A person who contrives, proposes or draws a lottery, or assists in contriving, proposing or drawing the same, is punishable by imprisonment for not more than two years, or by fine of not more than one thousand dollars, or both.

People v. Payne, 3 Den. 88, and other cases under § 323, *ante*.

§ 326. **Selling lottery tickets.**—A person who sells, gives, or in any way whatever furnishes or transfers, to or for another, a ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting to be or to represent a ticket, chance, share, or interest, in or dependent upon the event of a lottery, to be drawn within or without this state, is guilty of a misdemeanor.

Indictment. People v. Noelke, 1 N. Y. Cr. 252; 96 N. Y. 137; 46 Am. Rep. 218; Pickett v. People, 8 Hun, 83; aff'd, 67 N. Y. 609; Goodrich v. Houghton, 55 Hun, 529; 29 N. Y. State Rep'r, 907; People v. Emerson, 20 id. 18; 6 N. Y. Cr. 157; State v. Moore, 64 N. H. 9; 56 Am. Rep. 478; Com. v. Bierman, 13 Bush, 345.

§ 327. **Advertising lotteries.**—A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an account of a lottery, whether within or without the state, stating how, when or where the same is to be, or has been, drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, is guilty of a misdemeanor.

Advertising. People v. Charles, 3 Den. 212; S. C., 1 N. Y. 180; Van Valkenberg v. Torrey, 7 Cow. 255; People v. England, 27 Hun, 139; People v. Hart, 26 id. 396; Ormes v. Dauchy, 82 N. Y. 443; 37 Am. Rep. 583; State v. Kaub, 15 Mo. App. 433. See § 334, *post*.

§ 328. **Offering property for disposal dependent upon the drawing of any lottery.**—A person who offers for sale or distribution, in any way, real or personal property, or any interest therein, to be de-

termined by lot or chance, dependent upon the drawing of a lottery within or without this state, or who sells, furnishes, or procures, or causes to be sold, furnished, or procured, in any manner, a chance or share, or any interest in property offered for sale or distribution, in violation of this chapter, or a ticket or other evidence of such a chance, share, or interest, is guilty of a misdemeanor.

§ 329. **Keeping office, etc., for registry.**—A person who opens, sets up, or keeps, by himself or another person, an office or other place for registering the numbers of tickets in a lottery within or without this state, or for making, receiving, or registering any bets or stakes for the drawing, or result of such a lottery, or who advertises or in any way publishes any account of an opening, setting up, or keeping of such an office or place, is guilty of a misdemeanor.

People v. Jackson, 3 Den. 101.

§ 330. **Insuring lottery tickets, etc.**—A person who insures, or receives any consideration for insuring, for or against the drawing of a ticket, share, or interest in a lottery, or of a number of such a ticket, share or interest, or who receives any valuable consideration upon an agreement to pay money, or deliver property, in the event that a ticket, share, or interest, or a number of such a ticket, share, or interest in a lottery, shall prove fortunate or unfortunate, or shall be drawn or not drawn in a particular way or in a particular order, or who promises or agrees, or offers to pay money, or to deliver property, or to do, or forbear to do, any thing for the benefit of any person, with or without consideration, upon any accident or contingency dependent on the drawing thereof, or of any number or ticket therein, is guilty of a misdemeanor.

Kenney's case, 3 C. H. Rec. 53; Baldwin's case, id. 96.

§ 331. **Advertising offers to insure lottery tickets.**—A person who, by writing or printing, or by circular or letter, or in any other way, advertises or publishes an offer, notice, or proposition, in violation of the last section, is guilty of a misdemeanor.

§ 332. **Property offered for disposal in lotteries, forfeited.**—All property offered for sale, or distribution, in violation of the provisions of this chapter, is forfeited to the people of this state, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective district attorneys, to demand, sue for and recover, in behalf of the people, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of the poor.

People v. Phillips, 30 Hun, 554.

§ 333. **Letting building for lottery purposes.**—A person who lets, or permits to be used any building or portion of a building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.

People v. Jackson, 3 Den. 101; Adelmuth v. McGarren, 4 Daly, 467; Michael v. Bacon, 8 Am. Rep. 138.

§ 334. **Lotteries out of this state.**—The provisions of this chapter are applicable to lotteries drawn or to be drawn out of this state, whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.

People v. Warner, 4 Barb. 314; Goodrich v. Houghton, 55 Hun, 529; 29 N. Y. State Rep'r, 907. See cases under §§ 326, 327, *ante*.

§ 335. **Advertisements by persons out of the state.** — The provisions of section 327 and 331 are applicable, whenever the advertisement was published, or the letter or circular sent or delivered through or in this state, though the person causing or procuring the same to be published, sent or delivered, was out of the state at the time of so doing.

People v. Emerson, 20 N. Y. State Rep'r, 18; 6 N. Y. Cr. 157.

§ 335A. **Gift sales of food.** — No person shall sell, exchange or dispose of any article of food or offer or attempt to do so upon any representation, advertisement, notice or inducement that any thing other than what is specifically stated to be the subject of the sale or exchange, is or is to be delivered or received or in any way connected with or a part of the transaction as a gift, prize, premium or reward to the purchaser.

Any person violating any of the provisions of the foregoing section shall be deemed guilty of a misdemeanor and, in addition thereto, shall be liable to a penalty of twenty-five dollars, to be recovered with costs by any person suing therefor in his own name. [ADDED CH. 691. In effect July 1, 1887.]

Unconstitutional. People v. Gillson, 109 N. Y. 389; 4 Am. St. 465.

CHAPTER IX.

GAMING.

SEC. 336. Keeping gambling apparatus in certain places.
337. Punishment.
338. Gambling apparatus declared a nuisance.
339. Winning at play by fraudulent means.
340. Exacting payment of money won at play.
341. Winning or losing upward of twenty-five dollars.
342. Witness' privilege.
343. Keeping gambling establishments.
344. Common gambler, etc.
345. Seizure of gambling implements authorized.
346. Such implements to be destroyed or delivered to district attorney.
347. Such implements to be destroyed upon conviction.
348. Persuading another person to visit gambling places.
349. Certain officers directed to prosecute offenses under this chapter.
350. Duty of masters to suppress gambling on board their vessels.
351. Bets, etc., on horse races, etc.
352. Racing of animals for stake.

People v. Todd, 51 Hun, 448.

§ 336. **Keeping gambling apparatus in certain places.**—It is unlawful to keep or use any table, cards, dice or any other article or apparatus whatever, commonly used or intended to be used in playing any game of cards or faro, or other game of chance, upon which money is usually wagered, at any of the following places:

1. Within a building, or the appurtenances or grounds connected with any building, in which a court of justice usually holds its sessions; or a building, any part of which is usually occupied by a religious corporation, or an incorporated benevolent, charitable, scientific or missionary society, or an incorporated academy, high school, college or other institution of learning, a library company, or building and mutual loan company;

2. Within any building, or the appurtenances or grounds connected with any building, while votes are received or canvassed therein at any election for an officer of this state, or of the United States; or while any public meeting is held therein;

3. Within the distance of one mile from the grounds upon which any training, review, drill or exercise of a military organization, created or permitted by the laws of this state, is proceeding, or upon which any public fair, exhibition, exercise or meeting is held in the open air; or

4. Within any vessel lying in, or navigating, any of the waters of this state; or owned, or navigated by, or for account of any corporation created by the laws of this state.

See § 275, sub. 2, *supra*. Place for; use of table. State v. Leighton, 3 Foster, 167. See Steinhart v. Farrell, 3 N. Y. State Rep'r, 292; People v. Todd, 21 id. 400; 51 Hun, 448; Hitchins v. People, 89 N. Y. 454; Lyner's case, 5 C. H. Rec. 156; People v. Harrison, 28 How. 347; Story v. Solomon, 71 N. Y. 420; Murphy v. Board, etc., 11 Abb. N. C. 340; Harris v. White, 81 N. Y. 532; Cascadden's case, 2 C. H. Rec. 53; Rockwood v. Oakfield, 2 N. Y. State Rep'r, 331; State v. Bishel, 39 Iowa, 42; Long v. State, 22 Tex. App. 194; 58 Am. Rep. 633; Harbaugh v. People, 40 Ill. 294; People v. Sergeant, 8 Cow. 139; Ward v. State, 17 Ohio St. 32; State v. Book, 41 Iowa, 550; 20 Am. Rep. 609; Schlosser v. Smith, 98 Ind. 83; People v. Welthoff, 51 Mich. 203; 47 Am. Rep. 557; Gridley v. Dorn, 57 Cal. 78; 40 Am. Rep. 110; Shaw v. Clark, 49 Mich. 494; 43 Am. Rep. 474; Garrison v. McGregor, 51 Ill. 473; Toney v. State, 61 Ala. 1; Cornly v. Hillegas, 94 Penn. St. 132; 39 Am. Rep. 774; Dyer v. Benson, 69 Ga. 609; Nuckolls v. Com., 32 Gratt. 884; Ansley v. State, 36 Ark. 67; 38 Am. Rep. 29; Ellis v. Beale, 18 Me. 337; Wolz v. State, 33 Tex. 331; Whitney v. State, 10 Tex. App. 377; People v. Kelly, 3 N. Y. Cr. 272; People v. Cutler, 28 Hun, 465; 1 N. Y. Cr. 178.

§ 337. Id.; punishment. — A person who knowingly violates the last section is guilty of a misdemeanor.

People v. Todd, 51 Hun, 448; 21 N. Y. State Rep'r, 401.

§ 338. Gambling apparatus declared a nuisance. — An article or apparatus maintained or kept in violation of section 336, is a public nuisance.

See § 385, *post*. State v. Hardin, 1 Kans. 474; People v. Todd, 51 Hun, 449; 21 N. Y. State Rep'r, 401.

§ 339. Winning at play by fraudulent means. — A person who, by any fraud, or false pretense whatsoever, while playing at any game, or while having a share in any wager played for, or while betting on the sides or hands of such as play, wins or acquires to himself, or to any other, a sum of money or other valuable thing, is guilty of a misdemeanor.

See Code Cr. Proc., § 57. People v. Todd, 51 Hun, 449; 21 N. Y. State Rep'r, 401.

§ 340. Exacting payment of money won at play. — A person who exacts or receives from another, directly or indirectly, any money or other valuable thing, by reason of the same having been won by playing at cards, faro, or any other game of chance, or any

bet or wager whatever upon the hands or sides of players, forfeits five times the value of the money or thing so exacted or received, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

People v. Todd, 51 Hun, 449; 21 N. Y. State Rep'r, 401; Gilpin v. Daly, 59 Hun, 418; 36 N. Y. State Rep'r, 669.

§ 341. **Winning or losing upward of twenty-five dollars.** — A person who wins or loses at play or by betting, at any time, the sum or value of twenty-five dollars or upwards, within the space of twenty-four hours, is punishable by a fine not less than five times the value or sum so lost, or won, to be recovered in a civil action, by the persons charged with the support of the poor in the place where the offense was committed, for the benefit of the poor.

See Code Cr. Proc., § 57. People v. Todd, 51 Hun, 449; 21 N. Y. State Rep'r, 401; Langworthy v. Bromley, 29 How. 92; Arrieta v. Morrissey, 1 Abb. (N. S.) 439.

§ 342. **Witnesses' privilege.** — No person shall be excused from giving testimony upon any investigation or proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime: but such testimony cannot be received against him upon any criminal investigation or proceeding.

See § 712, *post*. People v. Todd, 51 Hun, 449; 21 N. Y. State Rep'r, 401; Steinhart v. Farrell, 3 id. 292; Gilpin v. Daly, 59 Hun, 416; 36 N. Y. State Rep'r, 668.

§ 343. **Keeping gaming and betting establishments.** — Any corporation or association or the officers thereof or any co-partnership or individual, who shall keep a room, shed, tent, tenement, booth, building, float or vessel or any part thereof, to be used for gambling or for any purpose or in any manner forbidden by this chapter, or for making any wagers or bets made to depend upon any lot, chance, casualty, unknown or contingent event or on the future price of stocks, bonds, securities, commodities or property of any description whatever, or for making any contract or contracts for or on account of any money, property or thing in action, so bet or wagered, or being the owner or agent knowingly lets or permits the same to be so used, is guilty of a misdemeanor. This section shall not be extended so as to prohibit or in any manner affect any insurance made in good faith for the security or indemnity of the party insured and which is not otherwise prohibited by law nor to any contract on bottomry or respondentia. And nothing in this section shall be construed to repeal or otherwise affect the provisions of chapter four hundred and seventy-nine of the laws of one thousand eight hundred and eighty-seven, entitled "An act prescribing the period in each year during which and the terms under which racing may take place upon the grounds of an association incorporated for the purpose of improving the breed of horses and suspending the operation of certain sections of the Penal Code." [AMD. CH. 428 of 1889.]

Gaming, place for. Occasional use. Hutchins v. People, 39 N. Y. 454. See People v. Sergeant, 8 Cow. 139; Tanner v. Albion, 5 Hill, 121. Lottto table. Lowery v. State, 1 Mo. 722. Keno. Pates v. State, 27 Ark. 360. Common gaming house. Lord v. State, 16 N. H. 325; State v. Lindley, 14 Ind. 430; State v. Currier, 23 Me. 43; Com. v. Dean, 1 Pick. 387; Stevens v. People, 67 Ill. 587. See People v. Todd, 51 Hun, 449; 31 N. Y. State Rep'r, 401; Gilpin v. Daly, 59 Hun, 418; 36 N. Y. State Rep'r, 669; People v. Emerson, 58 Hun, 439.

§ 344. **Common gambler, etc.**—A person who is the owner, agent, or superintendent of a place, or of any device, or apparatus, for gambling; or who hires, or allows to be used a room, table, establishment or apparatus for such a purpose, or who engages as dealer, game-keeper, or player in any gambling or banking game, where money or property is dependent upon the result; or who sells or offers to sell what are commonly called lottery policies, or any writing, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery; or who indorses or uses a book, or other document, for the purpose of enabling others to sell, or offer to sell, lottery policies, or other such writings, papers, or documents, is a common gambler, and punishable by imprisonment for not more than two years, or by a fine not exceeding one thousand dollars, or both.

Gaming, what is. For drinks. McDaniel v. Com., 6 Bush (Ky.), 326. Gift enterprise. Bell v. State, 5 Sneed, 507. Cock fighting. Johnson v. State, 4 id. 614. Bank. State v. Welch, 7 Port. 453. Horse-racing. Watson v. State, 3 Ind. 123. Prize candy. Eubanks v. State, 3 Heisk. 488. With cards. State v. Albertson, 2 Blackf. 251. See State v. Smith, 1 Meigs, 99; Bagley v. State, 1 Humph. 486. Dice. Com. v. Gourdier, 14 Gray, 390; Com. v. Taylor, id. 26. Playing once is. Cameron v. State, 15 Ala. 383; Swallow v. State, 20 id. 30; Buck v. State, 1 McCook, 61; West v. Com., 3 J. J. Marsh. 641. On credit. Com. v. Burns, 4 id. 177. What is letting? Robinson v. State, 24 Tex. 152. Betting. Quarles v. State, 4 Humph. 561; Parson v. State, 2 Carter, 499. See People v. Dewey, 33 N. Y. State Rep'r, 427; 11 N. Y. Supp. 602; People v. Borges, 6 Abb. 132; People v. Emerson, 53 Hun, 440; 25 N. Y. State Rep'r, 466; Dunn v. People, 27 Hun, 272; People v. Emerson, 20 N. Y. State Rep'r, 17; 6 N. Y. Cr. 157; People v. Todd, 51 Hun, 449; 21 N. Y. State Rep'r, 401.

§ 345. **Seizure of gambling implements authorized.**—A person, who is required or authorized to arrest any person for a violation of the provisions of this chapter, is also authorized and required to seize any table, cards, dice or other apparatus or article, suitable for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person arrested is required to be taken.

Willis v. Warren, 17 How. Pr. 100.

§ 346. **Such implements to be destroyed or delivered to district attorney.**—The magistrate, to whom any thing suitable for gambling purposes is delivered pursuant to the last section, must, upon the examination of the defendant, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the defendant in violation of the provisions of this chapter; and if he finds that it is of a character suitable for gambling purposes, and that it has been used by the defendant in violation of this chapter, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice may, in his opinion, require.

Willis v. Warren, 17 How. 100; 1 Hilt. 590; Lowry v. Rainwater, 70 Mo. 152; 35 Am. Rep. 420.

§ 347. **Such implements to be destroyed upon conviction.**—Upon the conviction of the defendant, the district attorney must cause to be destroyed every thing suitable for gambling purposes, in

respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney.

§ 348. **Persuading another person to visit gambling places.**—A person who persuades another to visit any building or part of a building, or any vessel or float, occupied or used for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property there lost by him at play, to be recovered in a civil action.

People v. Todd, 51 Hun, 450; 21 N. Y. State Rep'r, 402.

§ 349. **Certain officers directed to prosecute offenses under this chapter.**—It is the duty of all sheriffs, constables, police officers, and prosecuting or district attorneys to inform against, and prosecute, all persons whom they have reason to believe offenders against the provisions of this chapter; and any omission so to do is punishable by a fine not exceeding five hundred dollars.

People v. Todd, 51 Hun, 450; 21 N. Y. State Rep'r, 402.

§ 350. **Duty of masters to suppress gambling on board their vessels.**—If the commander, owner or hirer of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, or if he does not, upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars; and in addition thereto is liable to any party losing money or property by means of gambling in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

People v. Todd, 51 Hun, 450; 21 N. Y. State Rep'r, 402.

§ 351. **Bets, etc., on horse races, etc.**—A person who keeps any room, shed, tenement, tent, booth or building, or any part thereof, or who occupies any place upon any public or private grounds within this state, with books, apparatus or paraphernalia, for the purpose of recording or registering bets or wagers, or of selling pools, and any person who records or registers bets or wagers, or sells pools upon the result of any trial or contest of skill, speed or power of endurance, of man or beast, or upon the result of any political nomination, appointment or election; or being the owner, lessee or occupant of any room, shed, tenement, tent, booth or building, or part thereof, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device, or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodian or depositary for hire or reward, of any money, property or thing of value staked, wagered or pledged upon any such result, is punishable by imprisonment for one year, or by fine not exceeding two thousand dollars, or both. [OPERATION OF, SUSPENDED. SEE CH. 479 of 1887.]

Book-making is gambling. Haley v. Cridge, 1 Rob. C. C. 433; Murphy v. Board of Police, 11 Abb. N. C. 337; Jerome Park v. Board of Police, id. 342; People v. Kelly, 3 N. Y. Cr. 272; 22 Week. Dig. 64; People, *ex rel.* Ottolengui, v. Barbour, 5 N. Y. Cr. 381; People v. Bauer, 37 Hun, 407; Brennan v. Brighton B.

R. Ass'n, 56 Hun, 190; 30 N. Y. State Rep'r, 407; 24 Abb. N. C. 309; 15 N. Y. Supp. 708; Corrigan v. Coney I. J. Club, 40 N. Y. State Rep'r, 144; 27 Abb. N. C. 300.

§ 352. **Racing of animals for stake.**—All racing or trial of speed between horses or other animals for any bet, stake or reward, except such as is allowed by special laws, is a public nuisance; and every person acting or aiding therein, or making or being interested in any such bet, stake or reward is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits to the people of this state, all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof. [OPERATION OF, SUSPENDED, CH. 479 of 1887.]

See § 275, sub. 3, *ante;* Ruckman v. Bryan, 1 Den. 340; Same v. Pitcher, 1 N. Y. 392; Gibbons v. Governeur, 1 Den. 170; Harris v. White, 81 N. Y. 532; Brennan v. Brighton B. R. Ass'n, 56 Hun, 190; 30 N. Y. State Rep'r, 407; 24 Abb. N. C. 309; 15 N. Y. Supp. 708; Corrigan v. Coney I. J. Club, 40 N. Y. State Rep'r, 144; 27 Abb. N. C. 300.

CHAPTER X.

PAWNBROKERS.

SEC. 353. Pawnbroking without a license.
354. Refusing to exhibit stolen goods to owner.
355. Selling before time to redeem has expired and refusing to disclose particulars of sale.

§ 353. **Pawnbroking without a license.**—A person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at a rate of interest above that allowed by law, except by virtue of a license from a municipal corporation or other authority empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

§ 354. **Refusing to exhibit stolen goods to owner.**—A pawnbroker, or person carrying on the business of a pawnbroker, or a junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

§ 355. **Selling before time to redeem has expired, etc.**—A pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, or who willfully refuses to disclose the name of the purchaser, and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor.

See § 572, *post.*

TITLE XI.

Of Other Offenses.

SEC. 356. Practice of medicine, etc., without license.
357. Acts of intoxicated physicians.
358. Willfully poisoning food, etc.
359. Overloading passenger vessel.
360. Unauthorized pressure of steam.
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378. Taking usury.
379. Reconfining persons discharged upon writ.
380. Concealing persons entitled to writ of deliverance.
381. Innkeepers and carriers refusing to receive guests and passengers.
382. Frauds on hotel keepers.
383. Protecting civil and public rights.
384. Acrobatic exhibitions.

§ 356. Practice of medicine, etc., without license.—Repealed. CH. 647 of 1887.

See People v. Nyce, 34 Hun, 298; 3 N. Y. Cr. 50; People v. Fulda, 4 id. 133; 7 id. 1, 4, *note*; Wiel v. Cowles, 45 Hun, 308.

§ 357. Acts of intoxicated physicians.—A physician or surgeon, or person practicing as such, who, being in a state of intoxication, administers any poison, drug or medicine, or does any other act as a physician or surgeon, to another person, by which the life of the latter is endangered, or his health seriously affected, is guilty of a misdemeanor.

See § 200, *supra*.

§ 358. Willfully poisoning food, etc.—A person who willfully mingles poison with any food, drink or medicine, intended or prepared for the use of human beings, and a person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment in a state prison not exceeding ten years, or in a county jail, not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

See §§ 217, sub. 2, 218, sub. 1, *supra*.

§ 359. Overloading passenger vessel.—A person navigating a vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading on board the vessel, that by means thereof it sinks or is overset or injured, and thereby the life of a human being is endangered, is guilty of a misdemeanor.

See § 197, *supra*.

§ 360. **Unauthorized pressure of steam.**—A person who applies, or causes to be applied, to a steam boiler a higher pressure of steam than is allowed by law, or by the inspector, officer or person authorized to limit the pressure of steam to be applied to such boiler, is guilty of a misdemeanor.

See § 198, *supra*. People v. Jenkins, 1 Hill, 469; Landers v. Staten I. R. R. Co., 13 Abb. (N. S.) 338.

§ 361. **Generation of unsafe amount of steam.**—A captain or other person having charge of the machinery or boiler of a steamboat, used for the conveyance of passengers, in the waters of this state, who from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, creates, or causes to be created, an undue and unsafe pressure of steam, is guilty of a misdemeanor.

See § 198, *supra*. See cases cited under last section.

§ 362. **Mismanagement of steam boilers.**—An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

See § 198, *supra*.

§ 363. **Fictitious copartnership names.**—A person who transacts business, using the name, as partner, of one not interested with him as partner, or using the designation "and company," or "& Co." when no actual partner or partners are represented thereby, is guilty of a misdemeanor. But this section does not apply to any case, where it is specially prescribed by statute that a partnership name may be continued in use by a successor, survivor, or other person.

O'Toole v. Garvin, 1 Hun, 93; Swords v. Owen, 43 How. Pr. 184; Rosenheim v. Rosenfield, 37 N. Y. State Rep'r, 552; 8 N. Y. Supp. 655; Barron v. Yost, 35 N. Y. State Rep'r, 380; Cohn v. Gottschalk, 16 id. 818; Wood v. Erie Ry. Co., 72 N. Y. 196.

§ 364. **Offenses against trade-marks.**—A person who knowingly, in a case where provision for the punishment for the offense is not otherwise specially made by statute:

1. Falsely makes or counterfeits a trade-mark; or

2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another, without the latter's consent; or

3. Sells, or keeps or offers for sale, an article of merchandise to which is affixed a false or counterfeit trade-mark, or the genuine trade-mark, or an imitation of the trade mark of another, without the latter's consent; or

4. Has in his possession a counterfeit trade-mark, knowing it to be counterfeit, or a die, plate, brand or other thing for the purpose of falsely making or counterfeiting a trade-mark; or

5. Makes or sells, or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, an article of merchan-

dise with such a trade-mark as to appear to indicate the quantity, quality, character, place of manufacture or production, or persons manufacturing or producing the article, but not indicating it truly; or

6. Who knowingly sells, offers or exposes for sale, any goods which are represented in any manner, by word or deed, to be the manufacture or product of any person, firm or corporation, other than himself, unless such goods are contained in the original packages and under the labels, marks or names placed thereon by the manufacturer who is entitled to use such marks, names, brands or trade-marks; or

7. Who shall sell or shall expose for sale any goods in bulk, to which no label or trade-mark shall be attached, and shall by representation, name or mark written or printed thereon, represent that such goods are the production or manufacture of a person who is not the manufacturer;

Is guilty of a misdemeanor. [AMD. CH. 45 of 1889.]

See Code Cr. Proc., § 56; Low v. Hall, 47 N. Y. 104; People v. Fisher, 50 Hun, 553; 20 N. Y. State Rep'r, 538; People v. Molins, 7 N. Y. Cr. 51.

§ 365. **"Article of merchandise" defined.**—The expression "article of merchandise," as used in this title, signifies any goods, wares, work of art, commodity, compound, mixture, or other preparation or thing, which may be lawfully kept or offered for sale.

§ 366. **"Trade-mark" defined.** — A "trade-mark" is a mark used to indicate the maker, owner or seller of an article of merchandise, and includes, among other things, any name of a person, or corporation, or any letter, word, device, emblem, figure, seal, stamp, diagram, brand, wrapper, ticket, stopper, label, or other mark, lawfully adopted by him, and usually affixed to an article of merchandise, to denote that the same was imported, manufactured, produced, sold, compounded, bottled, packed, or otherwise prepared by him; and also a signature or mark, used or commonly placed, by a painter, sculptor, or other artist, upon a painting, drawing, engraving, statue, or other work of art, to indicate that the same was designed or executed by him.

People v. Fisher, 50 Hun, 553; 20 N. Y. State Rep'r, 538; Caswell v. Davis, 58 N. Y. 223; Newman v. Alvord, 51 id. 189; Gillott v. Esterbrook, 48 id. 374; Hier v. Abrahams, 82 id. 519; Meneely v. Meneely, 62 id. 427; Taylor v. Gillies, 59 id. 331; Smith v. Sixbury, 25 Hun, 232; Phelan v. Collender, 6 id. 244; Congress & E. Co. v. High R. C. S. Co., 45 N. Y. 291.

§ 367. **"Affixing" defined.** — A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon either

1. The article itself; or

2. A box, bale, barrel, bottle, case, cask, or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing, in, by, or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition.

§ 368. **Trade-marks deemed "counterfeited."** — An imitation of a "trade-mark" is that which so far resembles a genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the

use of words or letters, similar in appearance or in sound, or by any sign, device or other means whatsoever.

People v. Fisher, 50 Hun, 554; 20 N. Y. State Rep'r, 538; Coleman v. Crump, 70 N. Y. 573; Popham v. Cole, 66 id. 69; Clark v. Clark, 25 Barb. 76; Electro Silicon Co. v. Levy, 59 How. 469.

§ 369. **Refilling or selling stamped mineral water bottles, etc.** — Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and cannot become a lawful trade-mark or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration the use without the consent of the owner of the trade-mark, so described, or the filling of any bottle, siphon, barrel, vessel or thing for the purpose of sale, or for the sale therein, of any article of the same general nature and quality which said bottle, siphon, barrel, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor. [AMD. CH. 513 of 1885.]

Mullens v. People, 24 N. Y. 399; 23 How. 289.

§ 370. **Keeping such bottles with intent to refill or sell them.** — Any person engaged in the business of buying and selling bottles, siphons, barrels or other vessels or things, who shall, with intent to defraud the registered owner of a trade-mark, knowingly sell or offer for sale any bottle, siphon, barrel, vessel or other thing to any person, who he has reason to believe wrongfully intends to use the trade-mark upon it, or to fill such bottle, siphon, barrel, vessel or other thing in violation of section three hundred and sixty-nine, shall be deemed guilty of a misdemeanor.

See Mullens v. People, 24 N. Y. 399.

§ 371. **Search for bottles.**— Whenever a registered owner of a trade-mark, or his agent, makes oath before a magistrate that he has reason to believe, and does believe, stating the grounds of his belief, that a bottle, siphon, barrel, vessel or other thing to which is affixed a trade-mark belonging to him is being used or filled, or has been sold or offered for sale, by any person whomsoever, in violation of the preceding sections, then the magistrate may issue a search warrant to discover the thing and cause the person having it in possession to be brought before him and may thereupon inquire into the circumstances, and if on examination he finds that such person has been guilty of the offense charged, he may hold the offender to bail to await the action of the grand jury, and the offender shall

also be liable to an action on the case for damages for such wrongful use of such trade-mark at the suit of the owner thereof, and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

Mullins v. People, 24 N. Y. 399; 23 How. 289; People v. Hogan, 29 N. Y. State Rep'r, 110.

§ 372. **Defacing marks upon wrecked property.**— A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of a misdemeanor.

Baker v. Hoag, 7 N. Y. 555.

§ 373. **Defacing marks on logs, etc.**— A person who unlawfully cuts out, alters or defaces any mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this state or lying upon land, is guilty of a misdemeanor.

§ 374. **Officer unlawfully detaining wrecked property.**— An officer, whose duties pertain in any way to wrecked property, who, without authority of law, detains such property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of such duties, is guilty of a misdemeanor.

§ 375. **Fraud in affairs of limited partnership.**— A member of a limited partnership, who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

§ 376. **Solemnizing unlawful marriages.**— A minister, or magistrate, who solemnizes a marriage when either of the parties is known to him to be under the age of legal consent, or to be an idiot or an insane person, or a marriage to which, within his knowledge, a legal impediment exists, is guilty of a misdemeanor.

See § 301, *supra*.
See note *In re* Hampe, 2 City Ct. 401, 403; Hayes v. People, 25 N. Y. 390.
See Ch. 24 of 1877; Ch. 415 of 1889.

§ 377. **Unlawful confinement of idiots, insane persons, etc.**— A person, who confines an idiot, lunatic or insane person, in any other manner or in any other place than as authorized by law, and a person guilty of harsh, cruel or unkind treatment of, or any neglect of duty towards, any idiot, lunatic or insane person under confinement, whether lawfully or unlawfully confined, is guilty of a misdemeanor.

See § 223, sub. 6, *supra*.

§ 378. **Taking usury.** — A person who directly or indirectly receives any interest, discount, or consideration upon the loan or forbearance of money, goods or things in action, greater than is allowed by statute, is guilty of a misdemeanor.

People v. Wheeler, 47 Hun, 484.

§ 379. **Reconfining persons discharged upon writ.** — A person, who either solely, or as a member of a court, or in the execution of a judgment, order or process, knowingly recommits, imprisons or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of habeas corpus, or certiorari, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars or by imprisonment not exceeding six months, or both; and in addition to the punishment prescribed therefor, he forfeits to the party aggrieved, one thousand two hundred and fifty dollars to be recovered in a civil action.

See § 2050 of Code of Civ. Proc.; Matter of Felton, 16 How. 303; Yates' case, 4 Johns. 318; 6 id. 337; Matter of Jitz, 64 Mo. 205; 27 Am. Rep. 218; Matter of Crow, 60 Wis. 349; 30 Alb. L. J. 210.

§ 380. **Concealing persons entitled to writ of deliverance.** — A person having in his custody or power or under his restraint, one who would be entitled to a writ of habeas corpus or certiorari, or for whose relief a writ of habeas corpus or certiorari has been issued, who, with intent to elude the service of such writ, or to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who without lawful excuse refuses to produce him, is guilty of a misdemeanor, punishable as prescribed in the last section.

Rising v. Dodge, 2 Duer, 42.

§ 381. **Innkeepers and carriers refusing to receive guests and passengers.** — A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

See § 383, *post*.

§ 382. **Frauds on hotel keepers.** — A person who obtains any food or accommodation at an inn or boarding-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn or boarding-house, by the use of any false pretense, or who, after obtaining credit or accommodation at an inn or boarding-house, absconds and surreptitiously removes his baggage therefrom, without paying for his food and accommodation, is guilty of a misdemeanor. [AMD. CH. 645 of 1886.]

See note on pages 256, 257 of 23 Abb. N. C.; Com. v. Dennis, 1 Lehigh Valley L. Rep. 14.

§ 383. **Protecting civil and public rights.** — No citizen of this state can by reason of race, color, or previous condition of servitude, be excluded from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers, or common carriers, or by owners, managers or lessees of theaters or other places of amusement, by teachers and officers of common schools and public institutions of learning, or by cemetery associations. The violation of this section is a misdemeanor, punishable by a fine of not less than fifty dollars, nor more than five hundred dollars.

See § 381, *supra*. People v. King, 110 N. Y. 418; 42 Hun, 186.

§ 384. **Acrobatic exhibitions.** — The proprietor, occupant or lessee of any place where acrobatic exhibitions are held, who permits any person to perform on any trapeze, rope, pole or other acrobatic contrivance, without net-work or other sufficient means of protection from falling or other accident and any person who makes or attempts to make an ascension by means of a balloon, with a trapeze or parachute attachment, or any other device for the purpose of making a descent from such balloon, is guilty of a misdemeanor punishable for the first offense by a fine of two hundred and fifty dollars, and for each subsequent offense by a fine of two hundred and fifty dollars and imprisonment not less than three months nor more than one year. [AMD. CH. 268 of 1892. In effect July 1, 1892.]

TITLE XII.

Of Crimes Against the Public Health and Safety.

SEC. 385. "Public nuisance" defined.
386. Unequal damage.
387. Maintaining a nuisance a misdemeanor.
388. Permitting building to be used for nuisance.
389. Keeping gunpowder unlawfully.
390. Throwing gas-tar, etc., into public waters.
391. Violation of quarantine laws, by master of vessel.
392. Giving false information relative to vessel or permitting person to land before visit of health officer.
393. Landing from vessel before visit of health officer.
394. Going on board vessel at quarantine grounds, or entering quarantine grounds without leave.
395. Violating quarantine regulations.
396. Obstructing health officer in performance of his duty.
397. Willful violation of health laws.
398. Unlicensed piloting.
399. Coasting steamers excepted.
400. Acting as port warden without authority.
401. Apothecary omitting to label drugs, or labeling them wrongly.
402. Apothecary selling poison without recording the sale.
403. Refusing to exhibit record.
404. Selling poison without label.
405. Medical prescriptions.
406. Concealing foreign matter in merchandise.
407. Adulterating food, drugs, liquors, etc.
408 Disposing of tainted food.
409. Making, selling, etc., dangerous weapons.
410. Carrying, using, etc., certain weapons.
411. Possession, presumptive evidence.
412. Carrying concealed weapons.
413. Negligently managing or refusing to extinguish fires.
414. Obstructing attempts to extinguish fires.
415. Ferries.
416. Unlawful offers to railroad commissioners or their employes.
417. Misconduct of railroad commissioners and their employes.
418. Persons unable to read, not to act, or be employed as engineers.
419. Misconduct of officials employed on elevated railroads.
420. Intoxication or other misconduct of railroad or steamboat employes.
421. Failure to ring bell, etc.
422. Placing passenger in front of baggage car.
423. Platforms and heating apparatus of passenger car.
424. Guard posts; automatic couplers.
425. Officers of railroad companies to be uniformed.
426. Riding on freight cars.
427. Dangerous exhibitions; bathing.
428. Fires and lights on vessels in New York, Kings and Queens counties.

SEC. 429. Duty of guarding ice-cutting; how long such guards must be maintained; violation of duty to maintain guards around ice-cuttings.
430. Articles in imitation of food.
431. Noisome or unwholesome substances, etc., in highway.
432. Ambulances.
433. Using net or weir unlawfully in Hudson river.
434. Exposing person affected with a contagious disease in a public place.
435. False rumors as to public funds, etc.
436. Eavesdropping.
437. Destroying invoice.
438. False labels.
439. Skimmed milk.
440. Master of vessel bringing foreign convict.
441. Non-resident taking or planting oysters.
442. Use of certain dredges.
443. Mock auctions.
444. Interfering with navigation.
445. Maintaining private insane asylums.
446. Entry into agricultural fair grounds.
447. Drugging person, etc.

§ 385. **"Public nuisance" defined.**—A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing an act, or omitting to perform a duty, which act or omission:

1. Annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons; or

2. Offends public decency; or

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a lake, or a navigable river, bay, stream, canal or basin, or a public park, square, street or highway; or

4. In any way renders a considerable number of persons insecure in life, or the use of property.

See §§ 324, 328, *supra*. No length of time will legalize a nuisance. Rochester v. Erickson, 46 Barb. 92; Ogdensburgh v Lovejoy, 2 S. C. 83; aff'd, 58 N. Y. 62; Campbell v. Seaman, 63 N. Y. 568; 2 S. C. 231. Legislature may legalize. People v. N. Y. Gas Co., 6 Lans. 467; Phœnix v. Com'rs of Emigration, 12 How. Pr. 1; Delaney v. Blizzard, 7 Hun, 7; Patten v. N. Y. E. R. Co., 3 Abb. N. C. 306. No defense that it was first established; criminal intent not necessary. Taylor v. People, 6 Park. 347. Bowling alley. Tanner v. Albion, 5 Hill, 121; Updike v. Campbell, 4 E. D. Sm. 570. Theater. People v. Baldwin, 1 Wh. Cr. C. 279. By clergyman in church. Broad's case, 3 C. H. Rec. 7. Municipal corporation. Babcock v. Buffalo, 1 Sheld. 317; People v. Albany, 11 Wend. 539. Infant or *feme covert*, when not responsible for nuisance. People v. Townsend, 3 Hill, 479 See S. & T. Co. v. People, 66 Barb. 25.

Sub 1. Filthy tenement-house. Meeker v. Van Rensselaer, 15 Wend. 397. Disorderly house. People v. Carey, 1 Sheld. 573. Stable. Morris v. Brown, Anth. N. P. 363; Fish v. Dodge, 4 Den. 311; Fat boiling. Weil v. Schultz, 13 Pitts. L. J. 588; Cropsey v. Murphy, 1 Hilt. 126; Dubois v. Budlong, 15 Abb. Pr. 45; Prescott's case, 2 C. H. Rec. 161; Prout's case, 4 id. 87; Lynch's case, 6 id. 61; People v. Cunningham, 1 Den. 524; People v Carey, 4 Park. 238; Putnam v. Payne, 13 Johns. 312; Hinckley v. Emerson, 4 Cow. 351.

Sub. 2. People v. Rowland, 1 Wh. Cr. C. 286; Jacobowsky v. People, 6 Hun, 524; S. C., 64 N. Y. 659; Barnesciotta v. People, 10 Hun, 87; S. C., 69 N. Y 612. Gaming. People v. Livingston, 27 Hun, 105. Pool playing. People v. Cutler, 26 id. 465. Theater. Berry v. People, 1 N. Y. Cr. 43, 57; 77 N. Y. 588.

Sub. 3. Where encroachment on highway does not obstruct. Howard v. Robbins, 1 Lans. 63. River. Moore v. Com'rs of Pilots, 32 How. Pr. 182. Wharf. People v. Vanderbilt, 26 N. Y. 287; S. C., 28 id. 396. Bridge over highway. Knox v. New York, 55 Barb. 404. Bridge. Chenango Bridge v. Lewis, 63 Barb. 111; The Binghamton Bridge, 3 Wall. 51. Street railroad. Wetmore v. Story, 22 Barb. 414; Hamilton v N. Y. & H. R. Co , 9 Pal. 71; Anderson v Rochester, etc., Co , 9 How. Pr. 538; Hentz v. L. I. R. Co., 18 Barb. 646. Subterranean stream. Ellis v. Duncan, 21 Barb. 230; S. C., 29 N. Y. 466. Swampy lands.

Woodruff v. Fisher, 17 Barb. 224. State dam. Harris v. Thompson, 9 Barb. 350. Railroad depot. Phœnix v. Com'rs of Emigration, 12 How. Pr. 1. Dam. Renwick v. Morris, 3 Hill, 621; S. C., 7 id. 575; Adams v. Popham, 76 N. Y. 410; Brown v. Bowen, 30 id. 519. Sluice-way. Thompson v. Allen, 7 Lans. 459. Coal hole in sidewalk. Irwin v. Wood, 51 N. Y. 224. Coal hole. Clifford v. Dam, 81 N. Y. 52. Gas pipes. McCamus v. Citizens' Gas-light Co., 40 Barb. 380. Highway. Osborn v. Union Ferry Co., 53 Barb. 629. Tow-path. Conklin v. Phœnix Mills, 62 Barb. 299. Lime kiln. Hutchins v. Smith, 63 Barb. 251. Assisting in erection. Chenango Bridge Co. v. Lewis, 63 Barb. 111 Directing erection. Jones v. Chantry, 1 Hun, 613. Bridge authorized by congress, over stream, is not a nuisance as an obstruction. People, *ex rel.* Murphy, v. Kelly, 76 N. Y. 475. Harbor. People v. Horton, 5 Hun, 516; S. C., 64 N. Y. 610. Cable in stream. Blanchard v. Western Union Tel. Co., 60 N. Y. 570. Railroad crossing highway. People v. N. Y. C. R. R. Co., 71 N. Y. 302. Unsafe bridge. People v. Mohawk Bridge Co., 7 Alb. L. J. 232. Defective road. People v. Goshen, etc., Road, 11 Wend. 597; Susq., etc., T. Co. v. People, 15 id. 267; Waterford, etc., T. v. People, 9 Barb. 161; People v. Cunningham, 1 Den. 524; Harlem v. Hunniston, 6 Cow. 189; Lansing v. Smith, 8 id. 146; Dygert v. Schenck, 23 Wend. 446; Drake v. Rogers, 3 Hill, 604; People v. Lambier, 5 Den. 9; Mosher v. U. & S. R., 8 Barb. 427; Hart v. Albany, 9 Wend. 571; Hecker v. N. Y., etc., Co., 13 How. Pr. 549; 24 Barb. 315; Peckham v. Henderson, 27 id. 207; People v. Vanderbilt, 24 How. Pr. 301; Wetmore v. A. W. L. Co., 37 Barb. 70.

Sub. 4. Catlin v. Valentine, 9 Pai. 575; Brady v. Weeks, 3 Barb. 157; Prescott's case, 2 C. H. Rec. 161.

See, in addition, People v. Klock, 48 Hun, 277; Heeg v. Licht, 80 N. Y. 579; 8 Abb. N. C. 355; Caro v. Railroad Co., 46 Supr. 138; People v. Long I. R. Co., 9 Abb. 181; People v. Telephone Co., 11 id. 304; Van Norden v. Robinson, 45 Hun, 567; Board, etc. v. Casey, 18 N. Y. State Rep'r, 251; Cain v. Syracuse, 29 Hun, 105; aff'd, 95 N. Y. 83; People v. Butler, 4 Hun, 636; People v. Monteverde, 43 id. 447; Negus v. Brooklyn, 10 Abb. N. C. 181; 62 How. 191; 1 Civ. Pro. 471; Callanan v. Gilman, 107 N. Y. 360; Walsh v. Nelson, 101 id. 254; People v. N. Y. C. & H. R. R. Co., 89 id 266; People v. Lochfelm, 103 id. 1; 4 N. Y. Cr. 159; Groat v. Moak, 26 Hun, 380; aff'd, 94 N. Y. 115; People v. Brooklyn, etc., R. Co., 15 W. Dig. 74; Munson v. People, 5 Park. 16; People v. Crounse, 51 Hun, 489; 21 N. Y. State Rep'r, 692; 7 N. Y. Cr. 11; Chapman v. Rochester, 110 N. Y. 273; Simmons v. Everson, 123 id. 323; 36 N. Y. State Rep'r, 267; Flynn v. Taylor, 127 N. Y. 599; 40 N. Y. State Rep'r, 189.

§ 386. **Unequal damage.**—An act which affects a considerable number of persons, in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal.

§ 387. **Maintaining a nuisance a misdemeanor.**—A person, who commits or maintains a public nuisance, the punishment for which is not specially prescribed, or who willfully omits or refuses to perform any legal duty relating to the removal of such a public nuisance, is guilty of a misdemeanor.

Simmons v. Everson, 124 N. Y. 323; 36 N. Y. State Rep'r, 267; Wasmer v. D., L. & W. R. Co., 80 N. Y. 212; Syracuse, etc., R. Co. v. Tully, 66 Barb. 25.

§ 388. **Permitting building to be used for nuisance, etc.**—A person who,

1. Lets, or permits to be used, a building, or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance, or

2. Opens or maintains a place where opium, or any of its preparations, is smoked by other persons, or

3. At such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used, or

4. Visits or resorts to any such place for the purpose of smoking opium or its said preparations;

Is guilty of a misdemeanor.

See §§ 333, 343, *supra*. State v. Ah Crew, 16 Nev. 50; 40 Am. Rep. 488.

§ 389. Keeping gunpowder unlawfully.—A person, who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor. And a person, who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substance, injures, or occasions the injury of, the person or property of another, is punishable by imprisonment for not more than two years. Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and not less than three hundred dollars, or imprisonment in a state prison for not less than one nor more than five years, or be subject to both such fine and imprisonment. [AMD. CH. 689 of 1887.]

See § 201, *supra;* §§ 636, 645, *post*. People v. Sands, 1 Johns. 78; Myers v. Malcolm, 6 Hill, 292; Bradley v. People, 56 Barb. 73; Heeg v. Licht, 80 N. Y. 579; Van Norden v. Robinson, 45 Hun, 570; Rhodes v. Dunbar, 57 Penn. St. 274.

§ 390. Throwing gas tar, etc., into public waters.—A person, who throws or deposits gas tar, or the refuse of a gas-house or gas-factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

See § 444, *post*. New York v. Furgueson, 23 Hun, 594.

§ 391. Violation of quarantine laws.—A master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of New York, who refuses or omits:

1. To proceed to and anchor his vessel at the place assigned for quarantine, at the time of his arrival; or
2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine the length of quarantine and other regulations to which they ought respectively to be subject; or
3. To remain with his vessel at quarantine during the period assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given to them by law, shall prescribe in relation to his vessel, his cargo, himself his passengers or crew, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 392. Giving false information relative to vessel, or permitting person to land before visit of health officers.—A master of a vessel hailed by a pilot who:

1. Gives false information to such pilot, relative to the condition

of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel or permits any person, except a pilot to come on board of his vessel, or unlades or tranships any portion of his cargo, before his vessel has been visited and examined by the health officers; or,

3. Approaches with his vessel nearer the city of New York than the place of quarantine to which he may be directed, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or by both.

§ 393. **Landing from vessel before visit of health officers.**— A person, who, being on board any vessel at the time of her arrival at the port of New York, lands from such vessel, or unlades, or tranships, or assists in unlading or transhipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 394. **Going on board vessel at quarantine grounds, etc., without leave.**— A person who goes on board of, or has any communication or intercourse with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be detained at quarantine so long as the health officer directs, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained at the marine hospital, for such further time as the health officer directs.

§ 395. **Violating quarantine regulations** — A person who, having been lawfully ordered by a health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

§ 396. **Obstructing health officer in performance of his duty.**— A person who willfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 397. **Willful violation of health laws.**— A person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this Code; and a person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars, or by both.

§ 398. Unlicensed piloting.— A person other than a lawfully authorized branch Hell Gate pilot, who pilots, or offers to pilot, or tows or offers to tow, any boat or vessel (except barges, vessels under fifty-five tons burthen, and canal boats actually used in navigating the canals), through that part of the East river commonly called Hell Gate, is guilty of a misdemeanor. But no pilotage shall be charged to any vessel under a coasting license on entering or departing from the port of New York by way of the East river, called Hell Gate, unless such vessel actually employs a pilot, and the making such such* charge or demand without such employment shall be deemed a misdemeanor.

See Ch. 493, Laws 1881. Francisco v. People, 4 Park. 139; 18 How. 475; Com'rs, etc., v. Pac. Mail S. S. Co., 52 N. Y. 609; People v. Sperry, 50 Barb. 170; Henderson v. Spofford, 10 Abb. (N. S.) 140; 3 Daly, 361; Stillwell v. Raynor, 1 id. 47; 12 How. (U. S.) 299; People v. Francisco, 10 Abb. 30.

§ 399. Coasting steamers excepted.— The last section does not apply to vessels propelled wholly or partly by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.

Sturgis v. Spofford, 52 Barb. 436; 45 N. Y. 446; Griswold v. Masters, etc., 9 Johns. 76; Nickerson v. Mason, 13 Wend. 64.

§ 400. Acting as port-warden without authority.— A person who not being a port-warden, assumes or undertakes to act as such, or undertakes the performance of any of the duties prescribed by law, as pertaining to the office of port-warden; and a person who knowingly employs any other than the wardens for the performance of such duties; and a person who issues any certificate of a survey on vessels, materials or goods damaged, with intent to avoid the provisions of any statute, is guilty of a misdemeanor.

Curtin v. People, 26 Hun, 564; 89 N. Y. 621; Wardens v. Cartwright, 4 Sandf. 236; Tinkham v. Tapscott, 17 N. Y. 141.

§ 401. Apothecary omitting to label drugs, or labeling them wrongly.— An apothecary, or druggist, or a person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug or medicine, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

See Code Cr. Proc., § 56.

§ 402. Apothecary selling poison without recording the sale.— An apothecary or druggist, or a person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who sells or gives any poison or poison-

* So in original.

ous substance, without first recording in a book to be kept for that purpose, the name and residence of the person receiving such poison, together with the kind and quantity of such poison received and the name and residence of some person known to such dealer, as a witness to the transaction, except upon the written order or prescription of some practicing physician whose name is attached to the order, is guilty of a misdemeanor.

See Code Cr. Proc., § 56.

§ 403. **Refusing to exhibit record.** — A person whose duty it is by the last section to keep a book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said book upon reasonable demand made during ordinary business hours, is punishable by a fine not exceeding fifty dollars.

See Code Cr. Proc., § 56.

§ 404. **Selling poison without label.** — A person who sells, gives away or disposes of any poison or poisonous substance (except upon the order or prescription of a regularly authorized practicing physi cian), without attaching to the vial, box or parcel containing such poisonous substance, a label with the name and residence of such person, the word "poison" and the name of such poison all written or printed thereon in plain and legible characters; and a person who, after the first day of January eighteen hundred and eighty-seven, sells, gives away or disposes of or offers for sale any sulphate or other preparation of opium or morphine, except paregoric and those preparations containing two grains or less of opium or morphine to the ounce, without attaching to the bottle, vial, box or package containing such sulphate or other preparation of opium or morphine a scarlet label lettered in white letters, plainly naming the contents thereof, with the name and residence of such person, is guilty of a misdemeanor. [AMD. CH. 390 of 1886.]

See Code Cr. Proc., § 56; Thomas v. Winchester, 6 N. Y. 397.

§ 405. **Medical prescriptions.** — No person employed in a drug store or apothecary's shop shall prepare a medical prescription, unless he has served two years' apprenticeship in such a store or shop, or is a graduate of a medical college or college of pharmacy, except under the direct supervision of some person possessing one of those qualifications; nor shall any proprietor or other person in charge of such store or shop permit any person not possessing such qualifications to prepare a medical prescription in his store or shop, except under such supervision. A person violating any provision of this section is guilty of a misdemeanor punishable by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months; and in case of death ensuing from such violation, the person offending is guilty of a felony punishable by a fine not less than one thousand dollars nor more than five thousand dollars, or by imprisonment not less than two years nor more than four years, or by both such fine and imprisonment.

People v. Rontey, 21 N. Y. State Rep'r, 175.

§ 406. **Concealing foreign matter in merchandise.** — A person who, with intent to defraud, while putting up in a barrel, bag, bale,

box, or other package, cotton, hops, hay, or any other article of merchandise whatever, usually sold by weight in such packages, places or conceals therein any other substance or thing whatever, in a case where special provision for the punishment thereof is not otherwise made by statute, is guilty of a misdemeanor.

See § 580, *post*.

§ **407. Adulterating food, etc.** — A person who, either,

1. With the intent that the same may be sold as unadulterated or undiluted, adulterates or dilutes wine, milk, distilled spirits or malt liquor, or any drug, medicine, food or drink, for man or beast; or,

2. Knowing that the same has been adulterated or diluted; offers for sale or sells the same as unadulterated or undiluted, or without disclosing or informing the purchaser that the same has been adulterated or diluted, in a case where special provision has not been made by statute, for the punishment of the offense, or,

3. Sells or offers to sell, or stores or transports with intent to sell for any purpose other than cooling beer in casks, ice cut from any canal or from the wide waters or basins of any canal, unless the ice so sold, or offered for sale or stored or transported, is contained in a building, cart, car, sleigh, float or receptacle upon which is plainly marked in Roman or capital letters, not less than eight inches square, the words, "canal ice;" or,

4. Who shall adulterate maple sugar, maple syrup or honey, with glucose, cane sugar or syrup, beet sugar or syrup, or any other substance for the purpose of sale, or who shall knowingly sell or offer for sale maple sugar, maple syrup or honey that has been adulterated in any way, shall be deemed guilty of a misdemeanor. [AMD. CH. 634 of 1892. In effect Sept. 1, 1892.]

See Ch. 176, L. 1885; Ch. 467 of 1886; Ch. 407 of 1881; Ch. 246 of 1882; Ch. 202 of 1884, Ch. 477 of 1886. Food. People v. Gillson, 109 N. Y. 403; People v. Bischoff, 14 N. Y. State Rep'r, 581; People v. Fulle, 12 Abb. N. C. 196; 1 N. Y. Cr. 172, People v Schaffer, 41 Hun, 23. Butter. People v. Mahaney, 41 Hun, 26; People v. Arensberg, 103 N. Y. 388; State v. Marshall, 64 N. H. 549. Milk. People v. Marx, 99 N. Y. 377; People v. Cipperly, 101 id. 634; 4 N. Y. Cr. 69, rev'g 37 Hun, 324; People v West, 106 N. Y. 293; People v. McGann, 34 Hun, 358; Schrumpf v. People, 14 id. 10, Polinsky v. People, 73 N.Y. 65; Com. v. Evans, 132 Mass. 11; State v. Smith, 14 R. I. 100; 51 Am. Rep. 344; State v. Addington, 77 Mo. 110; People v. Storm, 8 N. Y. State Rep'r, 907; People v. Kibler, 106 N. Y. 321; People v. Waterbury, 44 Hun, 493. See also Butler v. Chambers, 36 Minn. 69; Powell v. Com., 127 U. S. 678; 114 Penn. St. 265.

§ **408. Disposing of tainted food.**—A person who with intent that the same may be used as food, drink, or medicine, sells, or offers or exposes for sale, any article whatever which, to his knowledge, is tainted or spoiled, or for any cause unfit to be used as such food, drink, or medicine, is guilty of a misdemeanor.

What are unwholesome. Goodrich v. People, 19 N. Y. 574; 3 Park. 622; State v Norton, 2 Ired. 40; Hunter v. State, 1 Head, 160; People v. Parker, 38 N. Y. 85; State v. Smith, 3 Hawkes, 378

§ **409. Making, etc., dangerous weapons.**—A person who manufactures or causes to be manufactured, or sells or keeps for sale, or offers, or gives, or disposes of any instrument or weapon of the kind usually known as slungshot, billy, sandclub or metal knuckles, or who, in any city, or incorporated village in this state, without the written consent of a police magistrate, sells or gives any pistol or

other firearm to any person under the age of eighteen years, is guilty of a misdemeanor. [AMD. CHS. 46 of 1884, AND 140 of 1889.]

§ 410. **Carrying, etc., certain weapons.**—A person who attempts to use against another, or who, with intent so to use, carries, conceals or possesses any instrument or weapon of the kind commonly known as the slungshot, billy, sandclub or metal knuckles, or a dagger, dirk or dangerous knife, is guilty of a felony. Any person under the age of eighteen years, who shall have, carry or have in his possession in any public street, highway or place in any city or incorporated village in this state, without a written license from a police magistrate of such city or incorporated village, any pistol or other firearm of any kind, shall be guilty of a misdemeanor. This section shall not apply to the regular and ordinary transportation of firearms as merchandise, or for use without the city or village limits. [AMD. CHS. 46 of 1884, AND 140 of 1889.]

What are concealed weapons. State v. West, 6 Jones, 605; Shadle v. State, 34 Tex. 572; Evans v. State, 46 Ala. 88; Owens v. State, 31 id. 387; State v. Huntley, 3 Ired. 418; People v. Emerson, 20 N. Y State Rep'r, 17; People v. Izzo, 39 id. 166.

§ 411. **Possession, presumptive evidence.**—The possession, by any person other than a public officer, of any of the weapons specified in the last section, concealed or furtively carried on the person, is presumptive evidence of carrying, or concealing, or possessing, with intent to use the same in violation of that section.

People, *ex rel.* Miller, v. Ryder, 58 Hun, 411; 34 N. Y. State Rep'r, 324; People v. Izzo, 39 id. 166; People v. Hill, 44 Hun, 472.

§ 412. **Carrying concealed weapons.**—Repealed.

§ 413. **Negligently managing or refusing to extinguish fires.**—A person who:

1. Negligently sets fire to his own woods, by means whereof the property of another is endangered; or,
2. Negligently suffers any fire upon his own land to extend beyond the limits thereof; or,
3. Having been lawfully ordered to repair to a place of a fire in the woods, and to assist in extinguishing it, omits without lawful excuse to comply with the order,

Is guilty of a misdemeanor.

See Code Cr. Proc., § 56. See note in 22 Abb. N. C. 377, 384.

§ 414. **Obstructing attempts to extinguish fires.**—A person who at any burning of a building is guilty of any disobedience to lawful orders of a public officer or fireman, or of any resistance to, or interference with, the lawful efforts of a fireman or company of firemen, to extinguish the same, or of any disorderly conduct likely to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

§ 415. **Ferries.**—A person who:

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law; or,

2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance;

Is guilty of a misdemeanor.

Where such ferry is upon waters dividing two counties, the offender may be prosecuted in either county.

§ 416. **Unlawful offers to railroad commissioners or their employes.**—Any officer, agent or attorney of a railroad corporation who offers a place, appointment, position or any other consideration to a railroad commissioner, or to a secretary, clerk, agent, employe or expert employed by the board of railroad commissioners, is guilty of a misdemeanor.

Mayor, etc., v. Starin, 106, N. Y. 12; Aiken v. West. R. Co., 20 id. 370; People v. Babcock, 11 Wend. 587; Almy v. Harris, 5 Johns. 175. See 9 Wheat. (U. S.) 1.

§ 417. **Misconduct of railroad commissioners and of their employes.**—Any railroad commissioner, or any secretary, clerk, agent, expert or other person employed by the board of railroad commissioners, who:

1. Directly or indirectly solicits or requests from or recommends to any railroad corporation, or to any officer, attorney or agent thereof, the appointment of any person to any place or position; or,

2. Accepts, receives or requests, either for himself or for any other person, any pass, gift or gratuity from any railroad corporation; or,

3. Secretly reveals to any railroad corporation, or to any officer, member, or employe thereof, any information gained by him from any other railroad corporation;

Is guilty of a misdemeanor.

§ 418. **Persons unable to read not to act or be employed as engineers.**—Any person unable to read the time-tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state: or any person who in his own behalf, or in behalf of any other person or corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive, is guilty of a misdemeanor.

§ 419. **Misconduct of officials or employes on elevated railroads.**— Any conductor, brakeman, or other agent or employe of an elevated railroad, who:

1. Starts any train or car of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention to depart therefrom by arising, or moving toward the exit thereof, has departed therefrom; or before every passenger on the platform or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employe of such railroad that the train is full, and that no more passengers can then be received; or,

2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,

3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed;

Is guilty of a misdemeanor.

§ 420. **Intoxication or other misconduct of railroad or steamboat employes.**—1. Any person who, being employed upon any railway as engineer, conductor, baggagemaster, brakeman, switch-tender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or, being employed as captain, engineer or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or

2. An engineer, conductor, brakeman, switch-tender, or other officer, agent or employe of any railroad corporation, who willfully violates or omits his duty as such officer, agent or employe, by which human life or safety is endangered, the punishment of which is not otherwise prescribed;

Is guilty of a misdemeanor.

See Code Cr. Proc., § 56.

§ 421. **Failure to ring bell, etc.**—A person, acting as engineer driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities), or to continue the ringing such bell, or sounding such whistle at intervals, until such locomotive, and the train to which the locomotive is attached, shall have completely crossed such road or street [or any officer or employe of a corporation, who shall willfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive or car for a longer period than five consecutive minutes, is guilty of a misdemeanor. [AMD. CH. 358 of 1891. In effect September 1, 1891.]

People v. N. Y. C. R. Co., 13 N. Y. 78; 25 Barb. 199; Powell v. R. Co., 14 N. Y. State Rep'r, 912.

§ 422. **Placing passenger car in front of baggage car.**—A person, being an officer or employe of a railway company, who knowingly places, directs, or suffers a freight, lumber, merchandise or oil car to be placed in rear of a car used for the convenience of passengers in a railway train, is guilty of a misdemeanor. [AMD. CH. 267 of 1889.]

Bushby v. N. Y., L. E. & W. R. Co., 107 N. Y. 380; 12 N. Y. State Rep'r, 9.

§ 423. **Platforms and heating apparatus of passenger cars.**—A railway corporation, or any officer or director thereof having charge of its railroad, or any person managing a railroad in this state, or any person or corporation running passenger cars upon a railroad into or through this state, who:

1. Fails to have the platforms or ends of the passenger cars run upon such railroad constructed in such manner as will prevent passengers falling between the cars when in motion; or,

2. Except temporarily, in case of accident or emergency, heats any passenger car, while in motion, on any such railroad more than fifty miles in length, except a narrow-gauge railroad which runs only mixed trains, between October fifteenth and May first, by any stove or furnace inside of or suspended from such car, except stoves of a pattern and kind approved by the board of railroad commis-

sioners for cooking purposes in dining-room cars, and except within the extended time allowed by the railroad commissioners in pursuance of law for introducing other heating apparatus;

Is guilty of a misdemeanor.

§ 424. **Guard posts; automatic couplers.** — All corporations and persons other than employes, operating any steam railroad in this state,

1. Failing to cause guard posts to be placed in the prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car; or

2. Failing after November 1, 1892, to equip all of their own engines and freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the board of railroad commissioners, in pursuance of law, for equipping such car with such couplers;

Is guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense.

See § 199, *supra*.

§ 425. **Officers of railroad companies to be uniformed.**—A person who,

1. Advises or induces any one, being an officer, agent or employe of a railway company, to leave the service of such company, because it requires a uniform to be worn by such officer, agent or employe, or to refuse to wear such uniform, or any part thereof; or

2. Uses any inducement with a person employed by a railway company, to go into the service or employment of any other railway company, because a uniform is required to be worn; or

3. Wears the uniform designated by a railway company without authority;

Is guilty of a misdemeanor.

§ 426. **Riding on freight cars.**—1. A person who rides on any engine or any freight or wood car of any railway company, without authority or permission of the proper officers of the company or of the person in charge of said car or engine; or

2. Who gets on any car or train while in motion (for the purpose of obtaining transportation thereon as a passenger); or

3. Who willfully obstructs, hinders or delays the passage of any car lawfully running upon any steam or horse or street railway. [AMD. CH. 458 of 1890. In effect September 1, 1890.]

Is guilty of a misdemeanor.

§ 427. **Dangerous exhibitions. Bathing.**—A person who, being lessee or occupant of any place of amusement, or any plot of ground or building, uses it or allows it to be used for the exhibition of skill, in throwing any sharp instrument at or toward any human being; or aims or discharges any bow-gun, pistol or firearm of any description

whatever, or allows one to be aimed or discharged at or towards any human being; or who being owner, lessee, proprietor or manager of any surf-bathing place, neglects at any time during the bathing season to maintain surf or life boats, or other life-saving apparatus, duly equipped and manned in the manner and to the extent prescribed by law;

Is guilty of a misdemeanor

§ 428. **Fires and lights on vessels in certain counties.**—A person who violates any of the provisions of an act to prevent conflagrations, passed May 19, 1879, is guilty of a misdemeanor, triable as therein prescribed.

See Ch 384 of 1879.

§ 429. **Duty of guarding ice cuttings, etc.**—A person or corporation cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing the ice for sale, must surround the cuttings and openings made, with fences of bushes or other guards sufficient to warn all persons of such cuttings and openings. Which fences or guards must be erected at or before the time of commencing the cuttings or openings, and must be maintained until ice has again formed therein to the thickness of at least six inches. Whoever omits to comply with this section, is guilty of a misdemeanor.

§ 430. **Articles in imitation of food.** — A person, who sells or manufactures, exposes or offers for sale as an article of food, any substance in imitation thereof, without disclosing the imitation by a suitable and plainly visible mark or brand, is guilty of a misdemeanor.

People v. Hill, 44 Hun, 472; People v. Arensberg, 103 N. Y. 388

§ 431. **Noisome or unwholesome substances, etc., in highway.**—A person who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

§ 432. **Ambulances.** — A person, who willfully stops or obstructs the passage of any ambulance or vehicle used for the transportation of sick or wounded persons or animals upon any public street, highway or place, or who willfully injures the same, or willfully drives any vehicle into collision therewith, is guilty of a misdemeanor. All sheriffs, constables and police officers must, when called upon by the persons in charge of such ambulance or vehicle, aid in placing sick or wounded persons or animals therein, and in enforcing the provisions of this section.

§ 433. **Using net or weir unlawfully in Hudson river.** — A person, who uses any net or weir for setting or attaching nets, or a pole

or other fixture in any part of the river Hudson, except as permitted by statute, is guilty of a misdemeanor.

§ 434. **Exposing person affected with a contagious disease in a public place.**—A person, who willfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

§ 435. **False rumors as to public funds, etc.**—A person, who, with intent to affect the market price of the public funds of this state or of the United States, or of any state or territory thereof, or of a foreign country or government, or of the stocks, bonds, or other evidences of debt of a corporation or association, or the market price of gold or silver coin or bullion, or any merchandise or commodity whatever,

1. Without lawful authority, falsely signs the name of an officer of a corporation, or of any other person to a letter, message, or other paper; or

2. Utters or circulates such a letter, message, or paper, knowing that the same has been so falsely signed; or

3. Knowingly circulates any false statement, rumor, or intelligence;

Is punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than three years, or both.

§ 436. **Eavesdropping.**—A person, who secretly loiters about a building, with intent to overhear discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor.

§ 437. **Destroying invoice.**—A person, who willfully destroys or suppresses an invoice, bill of lading, or any other document, writing, or thing whatever, which tends to show the ownership of wrecked property, is guilty of a misdemeanor.

§ 438. **False labels.**—A person who, with intent to defraud, either,

1. Puts upon an article of merchandise, or upon a cask, bottle, stopper, vessel, case, cover, wrapper, package, band, ticket, label, or other thing, containing or covering such an article, or with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced, or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; or

2. Sells or offers for sale an article, which to his knowledge is falsely described or indicated upon any such package, or vessel containing the same, or label thereupon, in any of the particulars specified; or

3. Sells or exposes for sale any goods in bulk to which no name or trade-mark shall be attached, and orally or otherwise represents that such goods are the manufacture or production of some other than the actual manufacturer or producer, in a case where the pun-

ishment for such offense is not specially provided for otherwise by statute, is guilty of a misdemeanor. [AMD. CH. 46 of 1889.]

See Code Cr. Proc., § 56; see § 580, *supra*. Low v. Hall, 47 N. Y. 104; Mayor, etc. v. Nichols, 4 Hill, 209; Materne v. Horwitz, 101 N. Y. 469; Brown v. Mercer, 37 Supr. 265; Rudder v. Huntington, 3 Sandf. 252; Knight v. Cunningham, 6 Hun, 106; Williams v. Spence, 25 How. 366.

§ 439. **Skimmed milk.**— A person, who sells or offers for sale, milk from which the whole or a part of the cream has been skimmed or removed, without disclosing the fact, or having a mark or label, plainly and legibly stating the fact, conspicuously affixed to every can or vessel containing the same, under circumstances not constituting an offense, for the punishment of which provision is otherwise specially made by statute, is guilty of a misdemeanor.

Verona, etc., Co. v. Murtaugh, 50 N. Y. 315; People v. Fauerback, 5 Park. 311.

§ 440. **Master of vessel bringing foreign convict.**— A person, being the master or commander of any vessel, or boat, arriving from a foreign country, who knowingly brings into this state a person who has been, or is a foreign convict of any offense, which if committed in this state would be punishable therein, is guilty of a misdemeanor.

See § 153, *supra*.

§ 441. **Non-resident taking or planting oysters.**— A person, who not being at the time an actual inhabitant and resident of this state, plants oysters in the waters of this state, without the consent of the owner of the same, or of the shore, or gathers oysters or other shell fish from their beds of natural growth, in any such waters on his own account or for his own benefit, or the benefit of a non-resident employer, is guilty of a misdemeanor, punishable by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars, or both.

See Code Cr. Proc., § 56; McCarty *et al.* v. Holman, 10 W. Dig. 538; People v. Lowndes, 55 Hun, 469; 30 N. Y. State Rep'r, 168; aff'd, 42 Id. 360, 363.

§ 442. **Use of certain dredges.** — A person who uses a dredge or drag operated by steam, or any dredge or drag weighing over thirty pounds, for the purpose of catching or taking oysters or other shell fish from beds of natural growth in the waters of this state is guilty of a misdemeanor. [AMD. CH. 526 of 1888.]

§ 443. **Mock auctions.** — A person who buys or sells, or pretends to buy or sell, any goods, wares, or merchandise, or any species of property, except ships, vessels, or real or leasehold estate, exposed for sale by auction, if an actual sale, purchase, and change of ownership therein does not thereupon take place, is guilty of a misdemeanor, punishable by imprisonment for thirty days, or by fine not exceeding one hundred dollars, or both.

See § 574, *post*; Ranney v. People, 22 N. Y. 413.

§ 444. **Interfering with navigation.** — A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders,

stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a misdemeanor.

See § 390, *supra*.

§ 445. **Maintaining private insane asylums.**— A person who conducts or maintains a private insane asylum, or institution for the care or treatment of persons of unsound mind, without a license issued and granted to such person according to law, is guilty of a misdemeanor.

§ 446. **Entry into agricultural fair grounds.** — A person who wrongfully and fraudulently enters any agricultural fair grounds, without paying the entrance fee, is guilty of a misdemeanor.

§ 447. **Drugging person, etc.** — A person who administers any drug or stupefying substance to another, with the intent, while such person is under the influence thereof, to induce such person to enter the military or naval service of the United States, of this state, or of any other state, country or government, is guilty of a misdemeanor.

See § 218, sub. 2, *supra*.

TITLE XIII.

Of Crimes Against the Public Peace.

Sec. 448. Disturbing lawful meetings.
449. "Riot" defined.
450. Punishment of riot.
451. Unlawful assemblies.
452. Disguised and masked persons, etc.
453. Allowing masquerades to be held in places of public resort.
454. Remaining present at place of riot, etc., after warning.
455. Remaining present at a meeting, originally lawful, after it has adopted an unlawful purpose.
456. Refusing to assist in arresting rioter.
457. Combinations to resist execution of process.
458. Prize fighting, aiding therein, etc.
459. What is a challenge.
460. Betting or stakeholding on fight.
461. Fight out of state.
462. Indictment.
463. 464. Apprehension of persons about to fight.
465. Forcible entry and detainer.
466. Returning to take possession of lands after being removed by legal process.
467. Unlawful intrusion, etc.
468. Discharging fire-arms in public places.
469. Witnesses' privilege.

§ 448. **Disturbing lawful meetings.** — A person who, without authority of law, willfully disturbs any assembly or meeting, not unlawful in its character, is guilty of a misdemeanor.

See §§ 274, 275, *ante;* Com. v. Hoxey, 16 Mass. 385; Campbell v. Com., 59 Penn. St. 266; People v. Judson, 11 Daly, 1, 82.

§ 449. **"Riot" defined.**— Whenever three or more persons, having assembled for any purpose, disturb the public peace, by using force or violence to any other person, or to property, or threaten or

attempt to commit such disturbance, or to do an unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they are guilty of riot.

What constitutes. People v. White, 55 Barb. 606; State v. Brazil, 1 Rice, 257; State v. Connolly, 3 Rich. 337; Com. v. Runnels, 10 Mass. 518; State v. Cole, 2 McCord, 117; Pa. v. Craig, Addis, 190; State v. Brooks, 1 Hill (S. C.), 361; State v. Russell, 45 N. H. 83; State v. Shaw, 33 Me. 554. Originator of, liable for the whole. State v. Blair, 13 Rich. 93. Previous design or preconcert unnecessary. People v. Ferris, 4 Hall L. J. 209; People v. White, 55 Barb. 606; People v. Judson, 11 Daly, 183; Slater v. Wood, 9 Bosw. 15; Rodman's case, 2 C. H. Rec. 88; Scott's case, id. 25; State v. Brown, 69 Ind. 95; 35 Am. Rep. 210; Spies v. People, 122 Ill. 1; 3 Am. Rep. 320; State v. Stallcup, 1 Ired. 30; 35 Am. Dec. 442.

§ 450. **Punishment of riot.**—A person guilty of riot, or of participating in a riot, either by being personally present, or by instigating, promoting, or aiding the same, is punishable as follows:

1. If the purpose of the assembly, or of the acts done or threatened or intended by the persons engaged, is to resist the enforcement of a statute of this state, or of the United States, or to obstruct any public officer of this state, or of the United States, in serving or executing any process or other mandate of a court of competent jurisdiction, or in the performance of any other duty; or if the offender carries, at the time of the riot, fire-arms or any other dangerous weapon, or is disguised; by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment;

2. In any other case, if the offender directs, advises, encourages, or solicits other persons, present or participating in the riot or assembly, to acts of force or violence, by imprisonment for not more than two years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment;

3. In any case, not embraced within the foregoing subdivisions of this section, by imprisonment for not more than one year, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

When presence not enough. Scott's case, 2 C. H. Rec. 25. See § 454, *post*.

§ 451. **Unlawful assemblies.**—Whenever three or more persons,

1. Assemble with intent to commit any unlawful act by force; or

2. Assemble, with intent to carry out any purpose, in such a manner as to disturb the public peace; or

3. Being assembled, attempt or threaten any act tending towards a breach of the peace or any injury to person or property, or any unlawful act, such an assembly is unlawful, and every person participating therein, by his presence, aid, or instigation, is guilty of a misdemeanor. But this section shall not be so construed as to prevent the peaceable assembling of persons for lawful purposes of protest or petition.

Sub. 2. Falconer v. Steers, 3 Luz. L. Obs. 163; Slater v. Wood, 9 Bosw. 15; People v. Judson, 11 Daly, 1, 82; Zeiger v. Nolan, 1 City Ct. Sup. 54; State v. Wood, 9 Bosw. 15.

Sub. 3. People v. Most, 128 N. Y. 113; 38 N. Y. State Rep'r, 829, aff'g 29 id. 97; 7 N. Y. Cr. 389.

§ 452. **Disguised and masked persons, etc.**—An assemblage in public houses or other places of three or more persons disguised by

having their faces painted, discolored, colored or concealed, is unlawful, and every individual so disguised, present thereat, is guilty of a misdemeanor; but nothing contained in this section shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment, or any assemblage thereof of persons masked, or as prohibiting the wearing of masks, fancy dresses, or other disguise by persons on their way to or returning from such ball or other entertainment; if, when such masquerade, fancy dress ball or entertainment is held in any of the cities of this state, permission is first obtained from the police authorities in such cities respectively for the holding or giving thereof, under such regulations as may be prescribed by such police authorities.

§ 453. **Allowing masquerades to be held in places of public resort.**— A person being a proprietor, manager or keeper of a theatre, circus, public garden, public hall, or other place of public meeting, resort or amusement, for admission to which any price or payment is demanded, who permits therein any assemblage of persons masked, prohibited in this title, is guilty of a misdemeanor, punishable by imprisonment in a state prison not exceeding two years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars and not less than one thousand dollars, or by both such fine and imprisonment.

§ 454. **Remaining present at place of riot after warning.**— A person, remaining present at the place of an unlawful assembly or riot, after the persons assembled have been warned to disperse by a magistrate or public officer, is guilty of a misdemeanor, unless as a public officer, or at the request or command of a public officer, he is endeavoring or assisting to disperse the same, or to protect persons or property, or to arrest the offenders.

See Code Cr. Proc., § 106.

§ 455. **Remaining after meeting has adopted unlawful purpose.**— Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to a riot, if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, or such act is committed, except public officers and persons assisting them in attempting to disperse the assembly, is guilty of a misdemeanor.

§ 456. **Refusing to assist in arresting rioter.**—A person, present at the place of an unlawful assembly or riot, who, being commanded by a duly authorized public officer to act or aid in suppressing the riot, or in protecting persons or property, or in arresting a person guilty of or charged with participating in the unlawful assembly or riot, neglects or refuses to obey such command, is guilty of a misdemeanor.

See Code Cr. Proc., § 108.

§ 457. **Combinations to resist execution of process.**—A person, who enters into a combination with another to resist the execution of any legal process, or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, is guilty of a misdemeanor.

See Code Cr Proc., §§ 102, 103.

§ 458. **Prize fighting, aiding therein, etc.**—A person who, within this state, engages in, instigates, aids, encourages or does any act to further, a contention or fight without weapons between two or more persons, or a fight commonly called a ring or prize fight, either within or without the state, or who sends or publishes a challenge or acceptance of a challenge for such a contention or fight, or carries or delivers such a challenge or acceptance, or trains or assists any person in training or preparing for such a contention or fight, is guilty of a misdemeanor.

See § 234, *supra*.

§ 459. **What is a challenge.** — Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply a desire, request, invitation or demand to engage in any fight, such as is mentioned in section 458, are to be deemed a challenge within the meaning of that section.

See § 236, *supra*. Barker v. People, 3 Cow. 386; 20 Johns. 457; Norton's case, 3 C. H. Rec. 90; Wood's case, id. 139; People v. Barker, 2 Wh. Cr. Cas. 19.

§ 460. **Betting or stakeholding on fight.** — A person who bets, stakes, or wagers money or other property, upon the result of such a fight or encounter, or who holds or undertakes to hold money or other property so staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

§ 461. **Fight out of state.**—A person who leaves the state, with intent to elude any provision of this title, or to commit any act without the state, which is prohibited by this title, or who, being a resident of this state, does any act without the state, which would be punishable by the provisions of this title, if committed within the state, is guilty of the same offense and subject to the same punishment, as if the act had been committed within this state.

See §§ 185, 239, *ante;* Code Cr. Proc., § 133.

§ 462. **Indictment.**—An indictment for an offense, specified in the last section, may be tried in any county within the state.

See § 240, *ante;* Code Cr. Proc., § 133.

§ 463. **Apprehension of persons about to fight.** — A magistrate having power to issue warrants in criminal cases, to whom it is made to appear that there is reasonable ground to apprehend that an offense specified in sections 458, 460 and 461 is about to be committed within his jurisdiction, or by any person being within his jurisdiction, must issue his warrant to a sheriff or constable, or other proper officer, for the arrest of the person or persons so about to offend. Upon a person being arrested and brought before him by virtue of the warrant, he must inquire into the matter, and, if it appears that there is reasonable ground to believe that the person arrested is about to commit any offense, the magistrate must require him to give a bond to the people of the state in such sum, not exceeding one thousand dollars, as the magistrate may fix, either with or without sureties in his discretion, conditioned that such person will not, for one year thereafter, commit any such offense.

§ 464. **Id.**—If the person arrested, as prescribed in the last section, does not furnish a bond as prescribed therein, within a time fixed by the magistrate, the latter must commit him to the county jail, there to remain until discharged by a court of record having criminal jurisdiction. A person so committed may, at any time, be discharged upon a writ of habeas corpus, upon his executing the bond required by the committing magistrate. If the bond is required to be given with one or more sureties, the surety or sureties must be approved by the officer taking the same.

§ 465. **Forcible entry and detainer.**—A person, guilty of using, or of procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and the manner allowed by law, is guilty of a misdemeanor.

Forcible entry, what is. People v. Field, 1 Lans. 222. Trespass, not enough. People v. Smith, 24 Barb. 19. What is. State v. Pearson, 2 N. H. 550. Detainer. People, *ex rel.* Kline, v. Rickert, 8 Cow. 226; State v. Marsh, 34 N. C. 378. Mere trespass no offense. People v. Smith, 24 Barb. 16. Must be seizure or possession. People v. Nelson, 13 Johns. 340; People v. King, 2 Col. & Cai. 364; People v. Shaw, 1 Cai. 125; People, *ex rel.* McInroy, v. Reed, 11 Wend. 157; People v. Leonard, 11 Johns. 504; Carter v. Newbold, 7 How. Pr. 166. See People v. Field, 1 Lans. 222. Use of force to repeal. Mickle's case, 1 C. H. Rec. 96, 119.

See People v. Carter, 29 Barb. 208; People v. Wilson, 13 How. 446; People v. Godfrey, 1 Hall, 240; People v. Van Nostrand, 9 Wend. 50; Mather v. Hood, 8 Johns. 44; People v. Anthony, 4 id. 198; People v. Farrell, 28 N. Y. State Rep'r, 44; Cain v. Flood, 38 id. 197.

§ 466. **Returning to take possession of lands after being legally removed.**—A person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterwards, without authority of law, returns to settle or reside upon or take possession of such lands, is guilty of a misdemeanor.

§ 467. **Unlawful intrusion on lands.**—A person who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor.

See § 640, sub. 9, *post;* People v. Stevens, 109 N. Y. 159.

§ 468. **Discharging firearms in public places.**—A person, who willfully discharges any species of firearms, air-gun, or other weapon, or throws any other deadly missile in any public place, or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

§ 469. **Witnesses' privilege.**—No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this title, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

See § 712, *post.*

TITLE XIV.

Of Crimes against the Revenue and Property of the State.

SEC. 470. Misappropriation, etc., and falsification of accounts by public officers.
471. Other violations of law.
472. Misappropriation, etc., by county treasurer.
473. Officer authorized to make any sale, lease or contract, becoming interested under it.
474. County clerks omitting to publish statement required by law.
475. Obstructing officer in collecting revenue.
476. Delivering false bill of lading to canal collector.
477. Weighmaster making false entry of weight of canal boat.
478. Canal officer concealing frauds upon the revenue.
479. Wilful injuries to the canals
480. Drawing off water from canals
481. Canal officer accepting bribe to allow water to be drawn off from canals.
482. Fraudulent appropriation of lost treasure or waived property.
483. Injuries to the salt works.
484. Seizing military stores belonging to the state.
485. Making false statement in reference to taxes.

§ 470. Misappropriation, etc., and falsification of accounts by public officers. — A public officer, or a deputy, or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this state, or of any department of the government of this state, or of any bureau or fund created by law, and in which the people of this state are directly or indirectly interested, or for or on account of any city, county, village or town, who

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him, or

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or

4. Willfully omits or refuses to pay over to the people of this state or their officer or agent authorized by law to receive the same, or to such city, village, county or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer, when it is his duty imposed by law to pay over, or account for, the same;

Is guilty of felony.

See § 114, sub. 2, *ante;* § 515, *post;* Bork v. People, 91 N. Y. 5; People v. Lyon, 1 N. Y. Cr. 400; People v. Church, 1 How. (N. S.) 366; 3 N. Y. Cr. 57.

§ 471. Other violations of law.—An officer or other person mentioned in the last section who willfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years, or both.

See § 155, *supra.*

§ 472. Misappropriation, etc., by county treasurer.—A county treasurer, who willfully misappropriates any moneys, funds or secu-

rities, received by or deposited with him as such treasurer, or who is guilty of any other malfeasance or willful neglect of duty in his office, is punishable by a fine not less than five hundred dollars nor more than ten thousand dollars, or by imprisonment in a state prison not less than one year or more than five years, or by both such fine and imprisonment.

§ 473. **Officials not to be interested in contracts, etc.**—A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the superintendent of public instruction, is guilty of a misdemeanor. [AMD. CH. 220 of 1890.]

Howell v. Barker, 4 Johns. Ch. 118.

§ 474. **County clerks omitting to publish statement required by law.**—A county clerk who willfully omits to publish any statement required by law, within the time prescribed, is guilty of a misdemeanor, punishable by a fine of one hundred dollars, or imprisonment for six months, or both.

§ 475. **Obstructing officer in collecting revenue.**—A person who willfully obstructs or hinders a public officer from collecting any revenue, taxes or other sum of money in which, or in any part of which the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 476. **Delivering false bill of lading to canal collector.**—A person whose duty it is to deliver to any collector of tolls upon any of the canals belonging to this state, a bill of lading of any property transported upon such canal, who delivers a false bill of lading as true, or makes or signs a false bill of lading, intending it to be delivered as true, knowing such bill to be false, is punishable by imprisonment in a state prison not exceeding two years, or by a fine not exceeding three times the value of the property omitted in such bill, or both.

Davis v. Bemis, 40 N. Y. 453.

§ 477. **Weighmaster making false entry, etc.**—A weighmaster upon any of the canals belonging to this state, and a clerk of such weighmaster, who makes a false entry of the weight of any boat, or cargo of any boat, navigating such canal, or who makes a false certificate of the light weight of any boat, knowing such entry or certificate to be false, is guilty of a misdemeanor.

§ 478. **Canal officer concealing frauds, etc.**—A public officer or agent employed by the people of this state in relation to the canals belonging to this state, who knows, or has good reason to believe that any fraud upon the revenues of the canals has been committed or attempted, and who omits to disclose the same, and enforce the penalties therefor, if within his power, is guilty of a misdemeanor.

§ 479. **Willful injuries to the canals.** — A person who, without authority of law, willfully inflicts an injury upon any of the canals belonging to this state, or disturbs or injures any of the boats, locks, bridges, buildings, machinery or other works or erections connected with any such canal, and in which the people of this state have an interest, is guilty of felony.

See Code Cr. Proc., § 56; Smith v. Clark, 3 Lans. 208.

§ 480. **Drawing off water from canals.** — A person who draws water from any canal in this state, or from a feeder or reservoir of any canal, during the season of navigation of the canal, and to the detriment or injury of the navigation thereof, without authority of law, is punishable by imprisonment in a county jail not less than one year, and by a fine not less than one thousand dollars.

Varrick v. Smith, 5 Paige, 136; *Ex parte* Miller, 2 Hill, 418; Lynch v. Stone, 4 Den. 356; Robinson v. Chamberlain, 34 N. Y. 400; Sipple v. State, 99 id. 239; 16 Abb. N. C. 434.

§ 481. **Canal officer accepting bribes, etc.** — A public officer or agent employed by the people of this state in relation to the canals belonging to the state, or a contractor for canal repairs, or person having charge of any canal, or any part thereof, or of any lock, waste weir, feeder or other work belonging thereto, or being employed thereon, who asks, or accepts or promises to accept any bribe as an inducement to permit water to be drawn from a canal, feeder or reservoir in violation of the last section; and a person who gives, or offers or promises to give to any officer or person above mentioned, any bribe as an inducement to him to permit water to be drawn from any canal, feeder or reservoir in violation of this section, is guilty of a misdemeanor.

§ 482. **Fraudulent appropriation of lost treasure, etc.** — A person who fraudulently conceals or appropriates to his own use any lost treasure or any waived property belonging to this state by virtue of its sovereignty, is guilty of a misdemeanor.

§ 483. **Injuries to the salt works.** — A person who willfully burns, destroys, or injures any salt manufactory connected with the Onondaga salt springs, or any building appurtenant to such manufactory or any part of such manufactory, or any of the buildings, reservoirs, pumps, conductors or water conduits, belonging to this state, used in the raising of salt water for the manufacture of salt, without authority of law, is punishable by imprisonment in a state prison not exceeding five years.

§ 484. **Seizing military stores belonging to the state.** — A person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this state; and a person who enters any such place with intent so to do, is punishable by imprisonment in a state prison not exceeding ten years.

§ 485. **Making false statement in reference to taxes.** — A person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or

assessment, or of an application to reduce any tax or assessment, willfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor.

TITLE XV.

Of Crimes Against Property.

CHAP. I. Arson.
II. Burglary and housebreaking.
III Forgery and counterfeiting.
IV. Larceny, including embezzlement.
V. Extortion.
VI. False personation and cheats.
VII. Fraudulently fitting out and destroying ships and vessels.
VIII. Fraudulent destruction of property insured.
IX. False weights and measures.
X. Fraudulent insolvencies by individuals.
XI. Fraudulent insolvencies by corporations, and other frauds in their management.
XII. Frauds in the sale of passage tickets.
XIII Frauds relative to documents of title to merchandise.
XIV Malicious mischief.

CHAPTER I.

ARSON.

SEC 486. Arson in first degree defined.
487. Id.; in second degree.
488. Id.; in third degree.
489. Arson, how punished.
490. Intent to destroy building requisite.
491. Contiguous buildings.
492. "Night-time" defined.
493. "Building," defined.
494. "Inhabited building," defined.
495. Ownership of building.

§ 486. **Arson in first degree defined.**—A person who willfully burns, or sets on fire, in the night time, either

1. A dwelling-house in which there is, at the time, a human being; or

2. A car, vessel, or other vehicle, or a structure or a building other than a dwelling-house, wherein, to the knowledge of the offender, there is, at the time, a human being;

Is guilty of arson in the first degree.

See § 637, *post*. Dwelling-house, defined, § 502, *post*. People v. Orcutt, 1 Park. 252. Presence of human being. Woodford v. People, 3 Hun, 310. Adjoining buildings. Henessy v. People, 21 How. Pr. 239. Setting fire to one's own house. Shepard v. People, 19 N. Y. 537; Ball's case, 2 C. H. Rec. 85; People v. Smith, 3 How. Pr. 226. Firing jail for purpose only of aiding escape. People v. Cotteral, 18 Johns. 115. Attempts. People v. Bush, 4 Hill, 133; McDermott v. People, 5 Park. 102; Mackesey v. People, 6 id. 114. Offense complete, though only a portion of building consumed. People v. Butler, 16 Johns. 203. In tenement-house in apartment of defendant only. Levy v. People, 19 Hun, 383. See Mary v. State, 24 Ark. 44; State v. Sandy, 3 Ired. 570; Com. v. Van Schaack, 16 Mass. 105; People v. Haggerty, 46 Cal. 354; Com. v. Tucker, 110 Mass. 403. Human being. Woodford v. People, 3 Hun, 310; 5 T. & C. 539; S. C., 62 N. Y. 117. Own house. State v. Hurd, 51 N. H. 176; Com. v. Van Schaack, 16 Mass. 105; State v. Sandy, 5 Ired. 570; Reg. v. Parker, 9 Carr. & P. 45; Reg. v. Russell, 1 Carr. & M. 541. See indictment. Levy v. People, 80 N. Y. 327; Morrill v. People, 7 Alb. L. J. 171. Evidence. 1 N. Y. Cr. 518; Carncross v. People, 17 W. Dig. 384; People v. McGrath, 5 N. Y. Cr. 4; 4 N. Y. State Rep'r, 689.

§ 487. **Arson in second degree.**—A person who,

1. Commits an act of burning in the day time, which, if committed in the night time, would be arson in the first degree; or

2. Willfully burns, or sets on fire, in the night time, a dwelling-house wherein, at the time there is no human being; or

3. Willfully burns, or sets on fire, in the night time, a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there is, at the time, a human being, so that the inhabited building is endangered, even though it is not in fact injured by the burning; or

4. Willfully burns, or sets on fire, in the night time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time;

Is guilty of arson in the second degree.

Peverelly v. People, 3 Park. 59; People v. Durkin, 5 id. 243; People v. Taylor, 2 Mich. 250; State v. McLaughlin, 8 Jones, 354; People v. McGrath, 4 N. Y. State Rep'r, 629; 5 N. Y. Cr. 4.

§ 488. **Arson in third degree.**—A person who willfully burns, or sets on fire, either

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof; or

2. A vessel, car, or other vehicle, or a building, structure, or other erection, under circumstances not amounting to arson in the first or second degree;

Is guilty of arson in the third degree.

Sub. 1. Dedieu v. People, 22 N. Y. 178; Freund v. People, 5 Park. 198.
Sub. 2. McGary v. People, 45 N. Y. 153; Carncross v. People, 1 N. Y. Cr. 518; Sheppard v. People, 19 N. Y. 537; People v. Henderson, 1 Park. 560; People v. Newton, 3 N. Y. Cr. 406; People v. O'Neill, 112 N. Y. 355; 6 N. Y. Cr. 274; 20 N. Y. State Rep'r, 754, aff'g 49 Hun, 422; 17 N. Y. State Rep'r, 956; 4 N. Y. Supp. 119

§ 489. **Arson, how punished.**—Arson is punishable as follows:

1. In the first degree, by imprisonment for a term not less than ten years.

2. In the second degree, by imprisonment for a term not exceeding fifteen years.

3. In the third degree, by imprisonment for a term not exceeding seven years.

§ 490. **Intent to destroy building requisite.**—The burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson.

People v. Long, 2 Edm. S. C. 129; People v. Jones, id. 86.

§ 491. **Contiguous buildings.**—Where an appurtenance to a building is so situated with reference to such building, or where any building is so situated with reference to another building that the burning of the one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing provisions, against any person actually participating in the original setting on fire, as of the moment when the fire from the one communicates to and sets on fire the other.

Roberts' case, 2 East's P. C. 1030; Isaac's case, id 1031; Reg. v. Fletcher, 2 Carr & K. 215; Reg. v. Price, 1 id. 73; Rex v. Petley, Leach C. C. 277.

Adjoining building. State v. Laughlin, 8 Jones. 354; People v. Taylor, 2 Mich. 250; Olson v. Ins. Co. 35 Minn. 432; 59 Am. Rep. 333; Arkell v. Ins. Co., 69 N. Y. 193; Woodford v. People, 3 Hun, 310; 62 N. Y. 117; Hennessey v. People, 21 How. 239; overruled, but not on this ground, in Dedieu v. People, 22 N. Y. 178.

§ 492. **"Night time," defined.**— The words "night time," as used in this chapter, include the period between sunset and sunrise, and every building or structure, which shall have been usually occupied by persons lodging therein at night, is a dwelling-house within the meaning of this chapter.

§ 493. **"Building" defined.**— Any house, vessel, or other structure, capable of affording shelter for human beings, or appurtenant to, or connected with a structure so adapted, is a "building" within the meaning of this chapter.

See § 504, *post*.
Com. v. Barney, 10 Cush. 478; State v. Johnson, 48 Ga. 116; State v. O'Toole, 29 Conn. 342; Rouse v. Catskill & N. Y. S. Co., 59 Hun, 82; 35 N. Y. State Rep'r, 493.

§ 494. **"Inhabited building," defined.**— A building is deemed an "inhabited building" within the meaning of this chapter, any part of which has usually been occupied by a person lodging therein at night.

People v. Orcutt, 1 Park. 252; Hooker v. Com., 18 Gratt. 763; Com. v. Barney, 10 Cush. 478; Rex v. Donovan, Leach C. C. 81; Reg. v. Connor, 2 Cox C. C. 65; People v. Cotteral, 18 Johns. 115; Smith v. State, 23 Tex. App. 357; 59 Am. Rep. 773.

§ 495. **Ownership of building.**— To constitute arson it is not necessary that another person than the defendant should have had ownership in the building set on fire.

People v. Van Blarcom, 2 Johns. 105; Shepherd v. People, 19 N. Y. 537; State v. Taylor, 45 Me. 322; People v. Smith, 3 How. 236.

CHAPTER II.

BURGLARY.

SEC. 496. Burglary in first degree defined.
497. Id., in second degree.
498. Id., in third degree.
499. "Break," defined.
500. "Night time," defined.
501. "Enter," defined.
502. "Dwelling-house," defined.
503. Dwelling-houses, etc., when deemed separate.
504. "Building," defined.
505. Unlawfully entering building.
506. Burglar punishable separately for crime in building.
507. Burglary, how punished.
508. Possessing burglar's instruments, etc.

§ 496. **Burglary in first degree defined.**— A person, who, with intent to commit some crime therein, breaks and enters, in the night-time, the dwelling-house of another, in which there is at the time a human being,

1. Being armed with a dangerous weapon; or
2. Arming himself therein with such a weapon; or
3. Being assisted by a confederate actually present; or

4. Who, while engaged in the night-time in effecting such entrance, or in committing any crime in such a building, or in escaping therefrom, assaults any person;

Is guilty of burglary in the first degree.

What constitutes breaking? People v. Bush, 3 Park. 552; State v. Boon, 13 Ired. 244; State v. Reid, 20 Iowa, 413; Lyons v. People, 68 Ill. 271; Com. v Strupney, 105 Mass 586. Inner door. State v. Wilson, Coxe, 439; State v. Scripture, 42 N. H. 485; Smith's case, 4 C. H. Rec. 62. Raising window. Frank v State, 39 Miss. 705; Dennis v. People, 27 Mich. 151. Grating. People v. Nolan, 22 Mich. 229. Moving loose plank. Com. v. Trimmer, 1 Mass. 476. Chimney. Com. v. Stephenson, 8 Pick. 354; State v. Willis, 7 Jones, 190. Entering. France v. State, 42 Tex. 276; State v. McCall, 4 Ala. 643; Allen v. State, 40 id. 334. Constructive breaking. State v Johnson, Phil. N. C. 186; State v. Mordecai, 68 N. C. 207; State v. Henry, 9 Ired. 403. Intent. State v. Bell, 29 Iowa, 316. Joint tenant. Clarke v. Com., 25 Gratt. 908; State v. Moore, 12 N H. 42. Tenement-house. Mason v. People, 26 N. Y. 200; People v. Bush, 3 Park. 552; People v. Boujet, 2 id. 11; Guche's case, 6 C. H. Rec. 1; Robertson's case, 4 id. 63; Smith's case, id. 62; People v. Fralick, H. & D. 63. Indictment. Rodgers v. People, 86 N. Y. 360. See People v. Burns, 2 N. Y. 415; People v. Moran, 54 Hun, 279; People v. Meegan, 104 N. Y. 529; People v. Richards, 44 Hun, 268; 5 N. Y. Cr. 355; Sullivan v. People, 27 Hun, 35; People v. Fellinger, 24 How. 341; 15 Abb. 128; Foster v. People, 63 N. Y. 619, aff'g 3 Hun, 6; State v. Beal, 37 Ohio St. 108; 41 Am. Rep. 490; Myers v People, 4 T. & C. 222; Com. v. Glover, 111 Mass. 402; Walker v. State, 63 Ala. 50; State v. Ryan, 12 Nev. 401; 28 Am. Rep. 802; Mack v. People, 82 N. Y. 235. See 3 N. Y. Supp. 813.

§ 497. **Burglary in second degree.**—A person, who, with intent to commit some crime therein, breaks and enters the dwelling-house of another in which there is a human being, under circumstances not amounting to burglary in the first degree, is guilty of burglary in the second degree.

§ 498. **Burglary in third degree.**—A person who either

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or

2. Being in any building, commits a crime therein and breaks out of the same;

Is guilty of burglary in the third degree.

Sub. 2. Sand's case, 6 C. H. Rec. 1; People v. Richards, 108 N. Y. 137, rev'g 44 Hun, 278; 5 N. Y. Cr. 355; People v. Park, 41 N. Y. 21, aff'g 1 Lans. 268; People v. Mason, 26 N. Y. 200; People v. Haight, 54 Hun, 9; 26 N. Y. State Rep'r, 53; People v. Hagan, 37 id. 661.

§ 499. **"Break," defined.**—The word "break," as used in this chapter, means and includes

1. Breaking or violently detaching any part, internal or external, of a building; or

2. Opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle, or other thing, used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; or

3. Obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; or

4. Entering such a building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building, or the walls or foundation thereof.

Unlatching cellar door. McCourt v. People, 64 N. Y. 583. Closed door. People v. Bush, 3 Park. 552; Tickner v. People, 6 Hun, 657. Breaking inner door. Smith's case, 4 C. H. Rec. 62. Window sash. People v. Edwards, 1 Wh. Cr. C. 171. Chimney. Robertson's case, 4 C. H. Rec. 63. Trap-door. People v. Fralick, Lalor, 63 Open window. People v. Arnold, 6 Park. 638. Intent sufficient. People v. Myers, 2 Hun, 6. Attempt. People v. Lawton, 56 Barb. 126. Foster v. People, 3 Hun, 6; aff'd, 63 N. Y. 619; Clark v. People, 5 T. & C. 33; Guche's case, 6 C H. Rec. 12; People v. Boujet, 2 Park. 11; Com. v. Strupney, 105 Mass. 588; 7 Am Rep. 556; Walker v. State, 63 Ala. 49; 35 Am Rep. 1; Brown v. State, 55 Ala. 123; 28 Am. Rep. 693; Johnston v. Com., 85 Penn. St. 54; 27 Am. Rep 622; Rolland v. Com., 82 Penn. St. 306; 22 Am Rep. 753; Timmons v. State, 34 Ohio St. 426; 32 Am. Rep. 376; State v. Groning, 33 Kans. 18; Nicholls v. State, 68 Wis. 416, 60 Am. Rep. 870; State v. Ward, 43 Conn. 489; 21 Am. Rep. 665; Robinson v. State, 53 Md. 151; 36 Am. Rep. 399; State v. McPherson, 70 N. C. 239; 16 Am. Rep. 769; Adkinson v. State, 5 Baxt. 569; 30 Am. Rep. 69. See 3 N. Y. Supp. 813.

§ 500. **"Night time," defined.**—[Repealed by ch. 677 of 1892.]

§ 501. **"Enter," defined.**—The word "enter," as used in this chapter, includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body or of any instrument or weapon held in his hand, and used, or intended to be used, to threaten or intimidate the inmates, or to detach or remove property.

See People v. Burt, 3 A. L. J. 96; People v. Fellinger, 24 How. Pr. 341; People v. Bush, 3 Park. 552; Sullivan v. People, 27 Hun, 35; Harrison v. State, 20 Tex. App. 387; 54 Am. Rep. 529.

§ 502. **"Dwelling-house," defined.**—A building, any part of which is usually occupied by a person lodging therein at night, is, for the purposes of this chapter, deemed a dwelling-house.

Bar-room under roof with dwelling. Quinn v. People, 11 Hun, 336; S. C., 71 N. Y. 561; People v. Snyder, 2 Park. 23; Store. Mill's case, 3 C. H. Rec. 192; People v. Parker, 4 Johns. 424; People v. McCloskey, 5 Park. 57; Rodgers v. People, 86 N. Y. 360; Smith's case, 5 C. H. Rec. 167; Wood's case, id. 10; Robertson's case, 4 id. 63; Jones' case, 1 id. 183.

§ 503. **Dwelling-houses, etc., when deemed separate.**—If a building is so constructed as to consist of two or more parts, intended to be occupied by different tenants usually lodging therein at night, each part is deemed the separate dwelling-house of a tenant occupying the same. If a building is so constructed as to consist of two or more parts occupied by different tenants separately for any purpose, each part or apartment is considered a separate building within the meaning of this chapter.

Rodgers v. People, 86 N. Y. 360; Mason v. People, 26 id. 200; People v. Bush, 3 Park. 552; Rolland v. Com., 85 Penn. St. 66; 27 Am. Rep. 626; Smith v. People, 115 Ill. 17.

§ 504. **"Building," defined.**—The term "building," as used in this chapter, includes a railway car, vessel, booth, tent, shop, or other erection or inclosure.

People v. Richards, 108 N. Y. 137; People v. Haight, 54 Hun, 9; Rouse v. Catskill & N. Y. S. Co., 59 id. 82; 35 N. Y. State Rep'r, 496; People v. Hogan, 37 id. 661; People v. Stickman, 34 Cal. 242; Anderson v. State, 48 Ala. 665; 17 Am. Rep. 36; Barnett v. State, 38 Ohio St. 7; Orrell v. People, 94 Ill. 456; 34 Am. Rep. 241.

§ 505. **Unlawfully entering building.**— A person who, under circumstances or in a manner not amounting to a burglary, enters a building, or any part thereof, with intent to commit a felony or a larceny, or any malicious mischief, is guilty of a misdemeanor.

People v. Meegan, 104 N. Y. 529.

§ 506. **Burglar punishable separately for crime in building.**— A person who, having entered a building under such circumstances as to constitute burglary in any degree, commits any crime therein, is punishable therefor, as well as for the burglary; and may be prosecuted for each crime, separately, or in the same indictment.

People v. Marks, 4 Park. 153.

§ 507. **Burglary, how punished.**— Burglary is punishable by imprisonment in a state prison, as follows:

1. Burglary in the first degree, for not less than ten years.
2. Burglary in the second degree, for not more than ten nor less than five years.
3. Burglary in the third degree, for a term not exceeding five years.

People v. Harrington, 1 How. (N. S.) 35.

§ 508. **Possessing burglars' instruments, etc.**— A person who makes or mends, or causes to be made or mended, or has in his possession in the day or night time, any engine, machine, tool, false key, pick-lock, bit, nippers, or implements adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same are intended to be so used, shall be guilty of a misdemeanor, and if he has been previously convicted of any crime he is guilty of a felony. [AMD. CH. 369 of 1884.]

People v. Emerson, 20 N. Y. State Rep'r, 15; 6 N. Y. Cr. 157; 5 N. Y. Supp. 374; People v. Morgan, 35 N. Y. State Rep'r, 643; 13 N. Y. Supp. 448.

CHAPTER III.

FORGERY.

SEC. 509. Forgery in first degree defined.
510. Id.; false certificate to certain instruments.
511. Id.; in second degree.
512. Qualification of last section.
513. Other cases of forgery in second degree.
514. 515. Id.; of forgery in third degree.
516. Forging passage tickets.
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518. Officer of corporation selling, etc., shares.
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520. Terms "forge" and "forging," defined.
521. Uttering, etc., forged instruments, etc., is forgery.
522. Uttering writing signed with wrong-doer's name.
523. Forgery in first degree, how punished.
524. Id.; in second degree.
525. Id.; in third degree.
526. Having possession of counterfeit coin.
527. Advertising counterfeit money

§ 509. **Forgery in first degree defined.**— A person is guilty of forgery in the first degree who with intent to defraud, forges,

1. A will or codicil of real or personal property, or the attestation thereof, or a deed or other instrument, being or purporting to be the act of another, by which any right or interest in property is or purports to be transferred, conveyed, or in any way charged or affected; or

2. A certificate of the acknowledgment or proof of a will, codicil, deed, or other instrument, which by law may be recorded or given in evidence when duly proved or acknowledged, made or purporting to have been made by a court or officer duly authorized to make such a certificate; or

3. A certificate, bond, paper, writing, or other public security, issued or purporting to have been issued by or under the authority of this state, or of the United States, or of any other state or territory of the United States, or of any foreign government, country or state, or by any officer thereof in his official capacity, by which the payment of money is promised absolutely or upon any contingency, or the receipt of any money or property is acknowledged, or being or purporting to be evidence of any debt or liability, either absolute or contingent, issued or purporting to have been issued by lawful authority; or

4. An indorsement or other instrument, transferring or purporting to transfer the right or interest of any holder of such a certificate, obligation, public security, evidence of debt or liability, or of any person entitled to such right or interest; or

5. A certificate of stock, bond or other writing, bank note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued or purporting to be issued by any bank, banking association or body corporate existing under the laws of this state, or of the United States, or of any other state, government or country, declaring or purporting to declare any right, title or interest of any person in any portion of the capital stock, or property of such a body corporate, or promising or purporting to promise or agree to the payment of money, or the performance of any act, duty, or obligation; or

6. An indorsement or other writing, transferring or purporting to transfer the right or interest of any holder of such a certificate, bond, or writing obligatory, or of any person entitled to such right or interest.

See subd. 5, § 718, *post*.

Name forged need not represent person of legal capacity. People v. Krummer, 1 Sheld. 542. Fictitious name. Brown v. People, 8 Hun, 562. Instrument invalid on its face. Cunningham v. People, 4 Hun, 555. Notes signed and issued by county treasurer without authority not forgery. Mann v. People, 15 Hun, 155; aff'd, 75 N. Y. 484. Insurance policy. People v. Graham, 1 Sheld. 151. Mistaken authority. Parmelee v. People, 8 Hun, 623; People v. Rathbone, 21 Wend. 509. Usurious note. People v. Fadner, 10 Abb. N. C. 462. Evidence. People v. Dagencourt, 19 W. Dig. 135. Punishment. People v. Raymond, 96 N. Y. 38.

Sub. 1. Deed of foreign lands. People v. Flanders, 18 Johns. 163. Of note or order. People v. Finch, 5 Johns. 236. Railway pass. Com. v. Ayer, 3 Cush. 150. Vincent v. People, 5 Park. 88; People v. Harrison, 8 Barb. 560; Paige v. People, 3 Abb. Dec. 439; 6 Park. 633; People v. Dewey, 35 Hun, 310; Bough v. People, 1 W. Dig. 182; Barton v. State, 23 Wis. 587; State v. Benham, 7 Conn. 414.

Sub. 3. People v. Mann, 75 N. Y. 484; People v. Brie, 43 Hun, 317; aff'd, 105 N. Y. 618; People v. D'Argenceur, 95 id. 694; 2 N. Y. Cr. 297; 19 W. Dig. 139.

Sub. 5. People v. Peabody, 25 Wend. 472; Dennis v. People, 1 Park. 469; Knapp's case, 6 C. H. Rec. 18; Marshall's case, id. 23; People v. Everhardt, 104

N. Y. 591; 6 N. Y. Cr. 232; People v. DeKroft, 49 Hun, 71; People v. Stearns, 21 Wend. 409; People v. Savage, 5 N. Y. Cr. 541; People v. Peacock, 6 Cow. 72; Heilbroner's case, 1 Park. 429; United States. v. Long, 30 Fed. Rep'r, 678; Billings v. State, 107 Ind. 54; 57 Am. Rep. 77; Fadner v. People, 2 N. Y. Cr. 558; 33 Hun, 240; Abbott v. Rose, 62 Me. 194; People v. Blake, 65 Cal. 275; People v. Martin, 36 Hun, 462; 3 N. Y. Cr. 123; People v. Jones, 27 W. Dig. 222.

§ 510. **False certificate to certain instruments.**—An officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who willfully certifies falsely, that the execution of such an instrument was acknowledged by any party thereto, or that the execution of any such instrument was proved, is guilty of forgery in the first degree.

§ 511. **Forgery in second degree.**—A person is guilty of forgery in the second degree who, with intent to defraud,

1. Forges the great or privy seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state, or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal or any gold or silver coin, whether of the United States, or of any foreign state, government or country; or

2. Forges a record of a will, conveyance, or instrument of any kind, the record of which is by the law of this state made evidence, or of any judgment, order, or decree of any court or officer, or a certified or authenticated copy thereof; or

A judgment roll, judgment, order or decree of any court or officer, or an enrollment thereof, or a certified or authenticated copy thereof, or any document or writing purporting to be such judgment, order, decree, enrollment, or copy; or

An entry made in any book of record or accounts, kept by or in the office of any officer of this state, or of any village, city, town, or county of the state, by which any demand, claim, obligation, or interest, in favor of or against the people of the state, or any city, village, town or county, or any officer thereof, is or purports to be created, increased, diminished, discharged, or in any manner affected; or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected; or

An instrument, document, or writing, being or purporting to be, a process or mandate issued by a competent court, magistrate, or officer of the state, or the return of an officer, court or tribunal, to such a process or mandate; or a bond, recognizance, undertaking, pleading, or proceeding, filed or entered in any court of the state, or a certificate, order or allowance by a competent court, or officer, or a license or authority granted pursuant to any statute of the state or a certificate, document, instrument, or writing, made evidence by any law or statute; or

An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or

in any manner affected, or by which any rights or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting, any person may be bound, affected or in any way injured in his person or property; or

3. Makes or engraves a plate in the form or similitude of a promissory note, bill of exchange, bank note, draft, cheque, certificate of deposit, or other evidence of debt, issued by a banker, or by any banking corporation or association, incorporated or carrying on business under the laws of the state, or of the United States, or of any other state or territory of the United States, or of any foreign government, or country, without the authority of such banker, or banking corporation or association; or

Without like authority, has in his possession or custody such a plate, with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression to be uttered; or

Without like authority, has in his possession or custody any impression taken from such a plate, with intent to have the same filled up and completed for the purpose of being uttered; or

Makes or engraves, or causes to be made or engraved, upon any plate, any figures or words, with intent that the same may be used for the purpose of falsely altering any evidence of debt hereinbefore mentioned.

Through an agent. Com. v. Hill, 11 Mass. 136; State v. Shurtliff, 18 Me. 368; Bishop v. State, 30 Ala. 34. Intent. Fox v. People (Ill.), 22 Alb. L. J. 118. Several acts. People v. Vankeuren, 5 Park. 66. See Hotchkiss v. English, 3 Hun, 369, 373. Deed of foreign lands. People v. Flanders, 18 Johns. 164; State v. Benham, 7 Conn. 414; Barton v. State, 23 Wis. 587. Must be calculated to injure. People v. Fitch, 1 Wend. 198; People v. Cady, 6 Hill, 490; Cunningham v. People, 4 Hun, 455. See People v. Krummer, 4 Park. 217; People v. Tomlinson, 35 Cal. 503; State v. Gherkin, 7 Ired. 206; State v. Kimball, 50 Me. 409; Perdue v. State, 2 Humph. 494; State v. Smith, 8 Yerg. 150; U. S. v. Mitchell, 11 Bald. 366.

Sub. 2. Forgery over genuine signature. Martine's case, 6 C. H Rec. 27. Order for delivery of money or goods. People v. Shaw, 5 Johns. 236; People v. Farrington, 14 id. 348; Dobb's case, 6 C. H. Rec. 61; Harris v. People, 9 Barb. 664; Heath's case, 2 C. H. Rec. 54; Noakes v. People, 25 N. Y. 380; S. C., 5 Park. 291. Due-bill. People v. Finch, 5 Johns. 237; People v. Mackey, cited id. When drawing check in another's name is not. Reg. v. Martin, 21 Alb. L. J. 91. Insurance policy. People v. Graham, 6 Park. 135. Constable's account and affidavit. Rosekrans v. People, 3 Hun, 287. Fictitious name to false paper. Grant's case, 3 C. H. Rec. 142; Riley's case, 5 id. 87; Gotobed's case, 6 id. 25; Silkworth's case, 5 id. 176. Forgery in signing one's own name. People v. Peacock, 6 Cow. 72. Indorsement. People v. Rathbone, 21 Wend. 529; Powell v. Com., 11 Gratt. 822. Instrument void on face, no offense. People v. Shall, 9 Cow. 778; People v. Harrison, 8 Barb. 560; Conner's case, 3 C. H. Rec. 59. See Graves v. Am. Ex. Bank, 17 N. Y. 205. Order. Evans v. State, 8 Ohio, 196; State v. Humphreys, 10 Humph. 442; State v. Cooper, 5 Conn. 200; State v. Holley, 1 Brev. 35; Poage v. State, 3 Ohio (N. S.), 229, Kegg v. State, 10 id. 75. Altering. People v. Brotherton, 47 Cal. 388; State v. Kattleman, 35 Mo. 105; State v. Kroeger, 47 id. 552; State v. Davis (Iowa), 22 Alb. L. J. 98; Fadner v. People, 33 Hun, 240; 2 N. Y. Cr. 553. Evidence and unfinished plate, id. 267.

Sub. 3. People v. Osmer, 4 Park. 242. Counterfeiting coin. Raswick v. Com., 2 Va. Cas. 511; People v. Fitch, 1 Wend 198; People v. D'Argencour, 32 Hun, 178; aff'd, 95 N. Y. 624; People v. Wheeler, 47 Hun, 484; People v. Reinitz, 7 N. Y. Cr. 71; People v. Elmore, 3 id. 264; People v. Clement, 26 N. Y. 194; Parmelee v. People, 8 Hun, 623; Miller v. People, 52 N. Y. 304; People v. Mann, 75 id. 484; Graves v. Am. Ex. Bk., 17 N. Y. 205; State v. Covington, 94 N. C. 913; 55 Am. Rep. 650; People v. Tower, 42 N. Y. State Rep'r, 165.

§ 512. Qualification of last section.—A plate, specified in the last section, is in the form and similitude of the genuine instrument imitated, if the finished parts of the engraving thereupon resemble and conform to similar parts of the genuine instruments.

Quinn's case, 6 C. H. Rec. 63; People v. Osmer, 1 Sheld. 583; 4 Park. 242. See 7 Pick. 137; 11 Cush. 481; 10 Ind. 372.

§ 513. Other cases of forgery in second degree.—An instrument partly written and partly printed, or wholly printed with a written signature thereto, and any signature or writing purporting to be a signature of, or intended to bind an individual, a partnership, a corporation or association or an officer thereof, is a written instrument or a writing, within the provisions of this chapter.

People v. Rhoner, 4 Park. 166.

§ 514. Other cases of forgery in third degree.—A person who either,

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or,

2. Who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting of any letter, telegram or other written communication, paper, or instrument, by which making, altering, forging or counterfeiting, any other person shall be in any manner injured in his good name, standing, position or general reputation; or,

3. Who shall alter, or who shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected; or,

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or premises; or, with like intent, shall sell, exchange or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, contract or other paper or

writing, knowing the same to have been forged, counterfeited or falsely altered—

Is guilty of forgery in the third degree. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

People v. Phelps, 6 Hun, 428; People v. Hyland, 28 id. 568; aff'd, 97 N. Y. 126.

§ 515. **Other cases of forgery in third degree.**—A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property, either

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or

2. Makes a false entry in any such account or book of accounts; or

3. Willfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction;

Is guilty of forgery in the third degree.

See § 114, *supra*. False entry in books. Biles v. Com., 32 Penn. St. 529; Phelps v. People, 72 N. Y. 371; 49 How. 462.

§ 516. **Forging passage tickets.**—A person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, cheque or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

State v. Weaver, 84 N. C. 836; 55 Am. Rep. 647; Com. v. Ray, 3 Gray, 441; People v. Harrison, 8 Barb. 560; People v. Shall, 8 Cow. 778.

§ 517. **Forging U. S. stamps.**—A person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Revenue stamp. Horton v. State, 32 Tex. 79; State v. Young, 47 N. H. 402; State v. Mott, 16 Minn. 472; John v. State, 23 Wis. 504.

§ 518. **Officer of corporation selling, etc., shares.**—An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in this title for that offense,

may also be sentenced to pay a fine not exceeding three thousand dollars.

See § 591, *post*.

§ 519. **Falsely indicating person as corporate officer.**—The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

§ 520. **Terms "forge" and "forging," defined.**—The expressions "forge," "forged" and "forging," as used in this chapter, include false making, counterfeiting and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature, of a party or witness, and the placing or connecting together with intent to defraud different parts of several genuine instruments.

State v. Stratton, 27 Iowa, 420; 1 Am. Rep. 289.

§ 521. **Uttering, etc., forged instruments, etc., is forgery.**—A person who, knowing the same to be forged or altered, and with intent to defraud, utters, offers, disposes of or puts off as true, or has in his possession, with intent so to utter, offer, dispose of, or put off, either

1. A forged seal or plate, or any impression of either; or
2. A forged coin; or
3. A forged will, deed, certificate, indorsement, record, instrument or writing, or other thing, the false making, forging or altering of which is punishable as forgery;

Is guilty of forgery in the same degree as if he had forged the same.

Uttering. Noakes v. People, 25 N. Y. 380; Gallaher's case, 5 C. H. Rec. 1; Chahoon v. Com., 20 Gratt. 733; Sands v. Com., id. 800; People v. Ah Who, 28 Cal. 205; People v. Brigham, 2 Mich. 550; U. S. v. Nelson, 1 Abb. 135; People v. Rathbun, 21 Wend. 509. Gambling. Com. v. Percival, Thach. C. C. 293. Intent. Com. v. Goodenough, id. 132; Henderson v. State, 14 Tex. 503; State v. Kimball, 50 Me. 409; People v. Martin, 36 Hun, 462; 3 N. Y. Cr. 122; Watson v. People, 64 Barb. 130; Paige v. People, 3 Abb. Dec. 439; 6 Park. 663; People v. Ryland, 97 N. Y. 126; 28 Hun, 568; People v. Courtney, id. 589; People v. Tower, 42 N. Y. State Rep'r, 165; People v. Caton, 25 Mich. 392.

§ 522. **Uttering writing signed with wrongdoer's name.**—Whenever the false making or uttering of any instrument or writing is forgery in any degree, a person is guilty of forgery in the same degree, who, with intent to defraud, offers, disposes of, or puts off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or indorsement is the act of another person of the same name, or of a person not in existence.

§ 523. **Forgery in first degree, how punished.**—Forgery in the first degree is punishable by imprisonment for a term not exceeding twenty years. [As Amd. by Ch. 662, Laws 1892. Took effect May 17, 1891.]

People v. Raymond, 96 N. Y. 38, aff'g 32 Hun, 124; 2 N. Y. Cr. 295.

§ 524. **Forgery in second degree, how punished.**— Forgery in the second degree is punishable by imprisonment for a term not exceeding ten years. [As AMD. BY CH. 662, LAWS 1892. Took effect May 17, 1892.]

§ 525. **Id.; in third degree.**— Forgery in the third degree is punishable by imprisonment for not more than five years.

People v. Raymond, 96 N. Y. 38; aff'd, 32 Hun, 124; 2 N. Y. Cr. 295.

§ 526. **Having possession of counterfeit coin.**— A person who has in his possession a counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same, as true or as false, or to cause the same to be so uttered or passed, is punishable by imprisonment not more than five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Moses's case, 2 C. H. Rec. 84; Lampier's case, 5 id. 179. Possession of a die. Murphy's case, 4 C. H. Rec. 42; Dorsett's case, 5 id. 77; Quinn's case, 6 id. 98; Gallagher's case, 5 id. 1; Weaver's case, 2 id. 57; Stewart v. Jessup, 51 Ind. 411; 19 Am. Rep. 738.

§ 527. **Advertising counterfeit money.**— A person who prints, writes, utters, publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet, hand bill or any other written or printed matter, advertising, offering or purporting to advertise or offer for sale, loan, exchange, gift, or distribution, or to furnish, procure or distribute any counterfeit coin, paper money, internal revenue stamp, postage stamp or any other token of value, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp, or any other token of value, or giving, or purporting to give, either directly or indirectly, information where, how, of whom or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp or token of value, can be procured or had, or what purports to be counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, can be procured or had, or whoever shall aid, assist or abet in any manner, in any scheme or device whatsoever, offering or purporting to offer, for sale, loan, gift, exchange or distribution, any counterfeit coin, paper money, internal revenue stamp, postage stamp or other token of value, whether called "green articles," "queer coin," "paper goods," "bills," "spurious treasury notes," "United States goods," "green paper goods," "business that is not legitimate," "cigars," "green cigars," or by any other name or title, or any other device of a similar character, shall be guilty of a felony and on conviction shall be punished by imprisonment for not less than one year nor more than five years, and by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense.

§ 2. Whoever in and for executing, operating, promoting, carrying on, or in the aiding, assisting or abetting in the promoting, operating, carrying on, or executing of any scheme or device whatsoever to defraud, by use or means of any papers, writings, letters, circulars or written or printed matters concerning the offering for sale, loan, gift, distribution, or exchange, of counterfeit coin, paper money, internal revenue stamps, postage stamps or other token of value as provided in section one of this act, shall use any fictitious,

false or assumed name or address, or name or address other than his own right, proper and lawful name; or whoever in the executing, operating, promoting, carrying on, aiding, assisting or abetting in the execution, promotion or carrying on of any scheme or device offering for sale, loan, gift, or distribution, or purporting to offer for sale, loan, gift or distribution, or giving or purporting to give information, directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or other token of value, can be obtained or had, or who shall knowingly receive or take from the mails of the United States any letter or package addressed to any such fictitious, false or assumed name or address or name other than his own right, proper or lawful name shall be guilty of a felony, and on conviction shall be punished by imprisonment for not less than one year, nor more than five years, and by a fine of not less than one hundred dollars nor more than two thousand dollars.

§ 8. Any letter, circular, writing or paper, offering or purporting to offer for sale, loan, gift, or distribution or giving, or purporting to give information directly or indirectly, where, how, of whom, or by what means any counterfeit coin, paper money, internal revenue stamp, postage stamp, or token of value, may be obtained or had, or concerning any similar scheme or device to defraud the public, whether such article, matter or thing is called "green articles," "queer coins," "paper goods," "queer," "articles," "bills," "business that is not legitimate," "spurious treasury notes," "United States goods," "green paper goods," "green articles," "cigars," "green segars," or by any other name, device or title of a similar character, shall be deemed presumptive proof of the fraudulent character of such scheme. [AMD. CH. 687 of 1887.]

People v. Reilley, 51 Hun, 625.

CHAPTER IV.

LARCENY, INCLUDING EMBEZZLEMENT, OBTAINING PROPERTY BY FALSE PRETENSES, AND FELONIOUS BREACH OF TRUST.

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545. Value of evidence of debt, how ascertained.
546. Id., passenger ticket.
547. Id., of other articles
548. Claim of title, ground of defense.
549. Intent to restore property.
550. Knowingly receiving.
551. Averment and proof.

§ 528. Larceny defined.—A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, either

1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or

2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof;

Steals such property, and is guilty of larceny.

Sub. 1. Larceny. Must be *lucri causa*. 2 N. Y. Cr. 32. Evidence. People v. Wiggins, 1 id. 290, 296; People v. Baker, 2 id. 218; York v. People, id. 263. When taking not larceny. People v. Devine, 20 Hun, 98. Entry on premises and taking property of another, no larceny in absence of intent; it is a mere trespass. McCourt v. People, 64 N. Y. 583; Collins v. Ralli, 20 Hun, 246; People v. Burton, 1 N Y. Cr. 297. Larceny may be laid in any county where goods brought by offender. Hoskins v. People, 16 N. Y. 344; Paine's case, 1 Ch. Rec. 64. Larceny not merged in burglary. People v. Smith, 57 Barb. 46. Felonious intent at time of taking necessary. Jeffer's case, 1 C. H. Rec. 83; Stone's case, 2 id. 157; Crocheron's case, 6 id. 62; Hadley's case, 5 id. 8; Hisrot's case, id. 137; Wilson v. People, 39 N. Y. 459. Felonious removal without carrying away sufficient. Tobias's case, 1 C. H. Rec. 30; Scott's case, 5 id. 169. Must be an asportation. Philip's case, 4 C. H. Rec. 177. What constitutes asportation. State v. Wisdom, 8 Porter, 511; State v. Jones, 65 N. C. 395; State v. Wilkerson, 72 id. 356. Slight removal sufficient. Harrison v. People, 50 N. Y. 518; State v. Wilson, Coxe, 439; State v. Jackson, 65 N. C. 305; Eckels v. State, 20 Ohio (N. S.), 508; Com. v. Luck's, 99 Mass. 431; State v. Gazell, 30 Mo. 92. Wife's clothes, larceny of, in elopement. People v. Schuyler, 6 Cow. 572; People v. Cole, 43 N. Y. 508; Reg. v. Flatman, 21 Alb. L. J. 404, 418. Counseling apprentice who steals, both guilty as principals. People v. Sheahan, 1 Wh. Cr. C. 226. Stealing from thief. Ward v. People, 3 Hill, 395; S. C., 6 id. 144. Subjects of larceny. Dogs. People v. Campbell, 4 Park. 386; Mullaly v. People, 86 N. Y. 365; People v. Maloney, 1 id. 593. Ice. Ward v. People, *supra*. Note. People v. Call, 1 Den. 120. Note payable in specific articles. People v. Bradley, 4 Park. 245; see 1 Sheld. 586. Unissued bank bills. People v. Wiley, 3 Hill, 194. Foreign bank notes. People v. Jackson, 8 Barb. 637. Certificates of stock. People v. Griffin, 38 How. Pr. 475. See Poultry and eggs. Com. v. Beeman, 8 Gray, 497. Animals *ferae naturae*, not. Norton v. Ladd, 5 N. H. 203. Except when confined or killed. State v. House, 65 N. C. 315. Doves. Com. v. Chace, 9 Rich. 15. Gas. Com. v. Shaw, 4 Allen, 308; People v. Caryl, 12 Wend. 547; Johnson v. People, 4 Den. 364; People v. Loomis, id. 380; Low v. People, 2 Park. 387; People v Bradley, id. 245; Payne v. People, 6 Johns. 103. Taking defined. Tobias' case, 1 C. H. Rec. 30; McDowell's case, 4 id. 177; S. C., 5 id. 94; Scott's case, id. 169. Intent. Ellis v. People, 21 How. Pr. 356. Must have a value. Payne v. People, 6 Johns. 103. Bees. State v. Murphy, 5 Blackf. 498. Not subjects of larceny. Chose in action. Linnenden's case, 1 C. H. Rec. 30. Undrawn lottery tickets. Healy's case, 4 id. 36. Letters. Payne v. People, 6 Johns. 103. Receipts. People v. Bradley, 4 Park. 245; People v. Griffin, 38 How. Pr. 475; People v. Loomis, 4 Den. 380. Attempt to steal when complete. State v. Wilson, 30 Comp. 500. Trick. Smith v. People, 53 N. Y. 111; Weyman v. People, 6 Lans. 396; State v. Deal, 64 N. C. 270; Defres v. State, 3 Heisk. 53. By agent. People v. McMurray, 1 Sheld. 563; State v. McCarty,

17 Minn. 76. Taking goods by owner. Palmer v. People, 10 Wend. 166; People v. Thompson, 34 Cal. 671; People v. Stone, 16 id. 369; Com. v. Green, 111 Mass. 392. Joint owner. Kinsey v. Fike, 29 Ala. 206. Accepting payment by mistake. Wolfstein v. Stein, 6 Hun, 121. Artifice. Weyman v. People, 4 Hun, 511; S. C., 62 N. Y. 623; Macino v. People, 12 Hun, 127. Fraudulent conspiracy. Loomis v. People, 67 N. Y. 322. Taking to apply on debt, larceny. Com. v. Stebbins, 8 Gray, 492. Intent to destroy. State v. Hawkins, 8 Porter, 461; Com. v. Weld, Thach. C. C. 157. For to receive reward, larceny. Com. v. Mason, 105 Mass. 163. Unknown owner. State v. Bell, 65 N. C. 313. Hiring, with felonious intent to convert, larceny. Brannan's case, 1 C. H. Rec. 50. Changing money. Hildebrand v. People, 56 N. Y. 134; 1 Hun, 19. Concealment with intent to convert, after lawful possession, larceny. People v. McGarren, 17 Wend. 460. Appropriation by finder of lost article, no larceny. People v. Anderson, 14 Johns. 294. Except owner is known. People v. Swan, 1 Park. 9; People v. Cogdell, 1 Hill, 94. Straying cattle. People v. Kaatz, 3 Park. 129. Appropriation by carrier of freight. Nichols v. People, 17 N. Y. 114. Felonious appropriation of lost cargo, master having power to regain possession, larceny. Dayton's case, 2 C. H. Rec. 154. Servant sending goods to auction, intending to appropriate proceeds, larceny. Langley's case, 4 C. H. Rec. 159. See People v. Wood, 2 Park. 22. Fraudulent purchase, not larceny. Mourey v. Walsh, 8 Cow. 238; Ross v. People, 5 Hill, 294. See Andrew v. Dieterica, 14 Wend. 31. Securing by trick, owner intending to retain title, is larceny. Smith v. People, 53 N. Y. 111; People v. Jackson, 3 Park. 590. When may be convicted without having possession. People v. McMurray, 4 Park. 234; Wixson v. People, 5 id. 119; People v. McDonald, 43 N. Y. 61. Pretended purchase, with felonious intent, larceny. O'Terre's case, 3 C. H. Rec. 154; Valentine's case, 4 id. 33; Bowen's case, id. 46; People v. Curtis, 1 Wh. Cr. C. 536; St. Valerie v. People, 64 Barb. 426. Owners' permission when no defense. Sandees v. State, 21 Alb. L. J. 196. False pretenses; two things must concur, false statement and reliance therein. People v. Tompkins, 1 Park. 224; People v. Miller, 2 id. 197; Kelly v. People, 6 Hun, 509. Post-dated check. Lesser v. People, 12 Hun, 668; S. C., 73 N. Y. 78; Foote v. People, 17 Hun, 218. Mortgage. People v. Sully, 1 Sheld. 17. Actual loss need not follow. Id. Representation must be calculated to mislead People v. Williams, 4 Hill, 9; People v. Stetson, 4 Barb. 151; People v. Sully, 5 Park. 152; People v. Wood, 10 N. Y. Leg. Obs. 61. Over-drawing bank account does not constitute. Allen's case, 3 C. H. Rec. 118; Stuyvesant's case, 4 id. 156. Nor where custody of goods has never actually changed. Ring's case, 1 C. H. Rec. 7. What constitutes. Stone's case, 2 C. H. Rec. 2; Mott's case, id. 155; Valentine's case, 4 id. 33; Collins' case, id. 143; Smith's case, id. 180; People v. Dalton, 2 Wh. Cr. C. 161; People v. Haynes, 11 Wend. 557; People v. Herrick, 13 id. 87; Thomas v. People, 34 N. Y. 351; People v. Cooke, 6 Park. 131; Com. v. Stevenson, 21 Alb. L. J. 516. Bill of lading. Lazarus' case, 1 C. H. Rec. 89. Ownership of property. People v. Kendall, 25 Wend. 399. Agency. People v. Johnson, 12 Johns. 292; Heath's case, 1 C. H. Rec. 116. Bill of exchange. DaCosta's case, 1 C. H. Rec. 83. Insurance. People v. Byrd, 1 Wh. Cr. C. 242. Check. Smith v. People, 47 N. Y. 303. First mortgage. People v. Sully, 5 Park. 142. Sale of personal property. People v. Crissie, 4 Den. 525. Charitable donation. People v. Clough, 17 Wend. 351. Payment of just debt, procured by. People v. Thomas, 3 Hill, 169; People v. Smith, 5 Park. 490. Indorsement obtained by. People v. Stone, 9 Wend. 182; People v. Chapman, 4 Park. 56. Signature to note. People v. Herrick, 13 Wend. 87. Goods must be actually obtained by. Lucie's case, 1 C. H. Rec. 140; Davis' case, 4 id. 61; Collins' case, *supra*; People v. Dalton, *supra*. Must be made as to something then in existence. Conger's case, 4 C. H. Rec. 65; People v. Tompkins, 1 Park. 224; State v. Magee, 11 Ind. 154; Dillingham v. State, 5 Ohio (N. S.), 280. Need not be sole inducement, if they materially affect. People v. Herrick, *supra*. Property must have been given for an honest purpose. Cord v. People, 46 N. Y. 470; People v. Stetson, *supra*. State courts have jurisdiction of false pretenses, although punishable under bankrupt law. Abbott v. People, 15 Hun, 487. Where triable. People v. Sully, *supra*. Minor responsible for false pretenses. People v. Kendall, 25 Wend. 399. Where party has means of information. Com. v. Drew, 19 Pick. 179. Id. Past event. State v. Evers, 49 Mo. 542; Dillingham v. State, 5 Ohio (N. S.), 280; Johnson v. State, 41 Tex. 65; State v. Magee, 11 Ind. 154. Id. Inducement. Scott v. People, 62 Barb. 63; State v. Thacher, 35 N. J. 445. Assertion must be of existing fact. Influence. People v. Crissie, 4 Den. 525; People v. Haynes, 11 Wend. 557; People v. Horrick, 13 id. 87; Ranney v. People, 22 N. Y. 413. See Zink v. People, 77 id. 114. Sale of horse. Watson v. People, 26 Hun, 76; 87 N. Y. 561. Misreading deed. Webster v. People, 92 N. Y. 422. Pretense must be of fact not intention. People v. Blanchard, 90 N. Y. 314. Influence. Therassen v. People, 82 N. Y. 238. Making change. Ct. S. S. v. Peo-

ple, 90 N. Y. 12. False lottery. People v. Tweed, 1 N. Y. Cr. 97. Constructive presence. McCamey v. People, 83 N. Y. 408.

Sub. 2. Public officer. People v. Genet, 19 Hun, 91; Coats v. People, 22 N. Y. 245; Bork v. People, 91 id. 5; Willis v. People, 19 Hun, 84. Bank cashier. Barton v. People, 78 N. Y. 377. Stage driver. People v. Sherman, 10 Wend. 298. Wrongful conversion of materials by tradesmen, does not constitute. People v. Burr, 41 How. Pr. 298. Sealed letter containing money. People v. Dalton, 15 Wend. 581. By partner. Weeks v. Lowerre, 19 Law Rep. 448. Compromise does not bar prosecution. Fagan v. Knox, 66 N. Y. 525. By clerk. People v. Henessy, 15 Wend. 147. Milligan's case, 6 C. H. Rec. 69. See People v. Howe, 2 T. & C. 883. Mingling funds. Com. v. Butterick, 100 Mass. 1; Com. v. Tuckeman, 10 Gray, 173; Com. v. Mason, 105 Mass. 163; Com. v. Foster, 107 id. 221; Ross v. Innis, 35 Ill. 487. False claim against municipality. People v. O. and T. of N. Y., 83 N. Y. 436. Draft on state funds and indictment. People v. Phelps, 49 How. Pr. 437; 72 N. Y. 334; People v. Dumar, 106 id. 507; Zink v. People, 77 id. 114; 6 Abb. N. C. 427; People v. Morse, 99 N. Y. 662; 3 N. Y. Cr. 321; Soltan v. Gerdan, 48 Hun, 543; Benedict v. Williams, 15 N. Y. State Rep'r, 679; People v. Brien, 53 Hun, 496; People v. Ward, 3 N. Y. Cr. 504; People v. Pollock, 51 Hun, 613; People v. Sanborn, 14 N. Y. State Rep'r, 129; People v. Cruger, 38 Hun, 500; 102 N. Y. 510; Thorne v. Turck, 94 id. 95; People v. Woodward, 31 Hun, 57; 2 N. Y. Cr. 32; People v. Wiggins, 16 W. Dig. 141; People v. Phelps, 49 How. 462; 72 N. Y. 365; People v. Pollock, 51 Hun, 613; 22 N. Y. State Rep'r, 64; People v. Moore, 37 Hun, 93; 3 N. Y. Cr. 458; Wilson v. People, 39 N. Y. 459; People v. Civille, 44 Hun, 499; People v. Dimick, 107 N. Y. 32; Shipply v. People, 86 id. 375; People v. McCallam, 103 id. 588; Goldstein v. People, 82 id. 235; People v. Morse, 99 N. Y. 662; 3 N. Y. Cr. 104; People v. Reavy, 38 Hun, 418; 4 N. Y. Cr. 1; 39 Hun, 364; Justices, etc. v. People, *ex rel.* Henderson, 90 N. Y. 12; 1 N. Y. Cr. 83; People v. Ward, 3 id. 488; People v. Baker, 96 N. Y. 340; People v. Stevens, 38 Hun, 65; Watson v. People, 87 N. Y. 565; People v. Dunn, 58 Hun, 381; 25 N. Y. State Rep'r, 461; 7 N. Y. Cr. 173; People v. Blivin, 112 N. Y. 87; People v. Willetts, 102 id. 251; People v. Herman, 45 Hun, 175; People v. McTameney, 1 N. Y. Cr. 441; 30 Hun, 506; 13 Abb. N. C. 56; People v. Poucher, 30 Hun, 577; 1 N. Y. Cr 546; People v. Woodward, 31 Hun, 60; People v. Cook, 41 id. 67; People v. Tweed, 1 N. Y. Cr. 97; Webster v. People, id. 190; People v. Burton, id. 297; People v. Raymond, 2 id. 218; York v. People, id. 263; People v. Lyon, 3 id. 168; People v. Wiggins, 92 N. Y. 656; 1 N. Y. Cr. 290; Hentz v. Miller, 94 N. Y. 65; Collyer v. Collyer, 50 Hun, 424; 21 N. Y. State Rep'r, 119; Allen v. D. D., E. B. & B. R. Co., 19 id. 118; People v. Page, 22 id. 277; People v. Rice, 35 id. 189; Matter of McFarland, 59 Hun, 306; 36 N. Y. State Rep'r, 574; People v. Jeffrey, 38 id. 315; People v. McHale, 39 id. 759; People v. Sherman, 40 id. 833.

§ 529. Obtaining money or property by fraudulent draft.— A person who willfully, with intent to defraud, by color or aid of a cheque or draft, or order for the payment of money or the delivery of property, when such person knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the amount, or delivery of the property, although no express representation is made in reference thereto, obtains from another any money or property, is guilty of stealing the same and punishable accordingly.

See § 569, *post*. DaCosta's case, 1 C. H. Rec. 83; Allin's case, 3 id. 118; Smith v. People, 47 N. Y. 308; Lesser v. People, 12 Hun, 670; 73 N. Y. 78; Rex v. Jackson, 3 Camp. 370; Rex v. Parker, 7 Car. & P. 825; People v. Cuykendall, 3 N. Y. Cr. 312; People v. Foote, 17 Hun, 218.

§ 530. Grand larceny in first degree.— A person is guilty of grand larceny in the first degree, who steals, or unlawfully obtains or appropriates, in any manner specified in this chapter,

1. Property of any value, by taking the same from the person of another in the night time; or

2. Property of the value of more than twenty-five dollars, by taking the same in the night time from any dwelling-house, vessel, or railway car; or

3. Property of the value of more than five hundred dollars, in any manner whatever.

People v. McTameney, 30 Hun, 506; 1 N. Y. Cr. 441; 13 Abb. N. C. 56; Bork v. People, 91 N. Y. 379; 31 Hun, 360; 1 N. Y. Cr. 368; People v. Dunn, 53 Hun, 384; 25 N. Y. State Rep'r, 461; 7 N. Y. Cr. 174; Phelps v. People, 72 N. Y. 334; 49 How. 462; Williams v. People, 24 N. Y. 405; Higgins v. People, 7 Lans. 110; Rhobibau v. People, 5 Park. 395.

§ 531. **Id., in second degree.**— A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this chapter, steals or unlawfully obtains or appropriates,

1. Property of the value of more than twenty-five dollars, but not exceeding five hundred dollars, in any manner whatever; or

2. Property of any value, by taking the same from the person of another; or

3. A record of a court or officer, or a writing, instrument or record kept filed or deposited according to law, with, or in keeping of any public office or officer.

People v. Grimm, 3 N. Y. Cr. 317; People v. Moore, 37 Hun, 84; People v. Morse, 99 N. Y. 662; People v. Cuykendall, 3 N. Y. Cr. 312; People v. Reavey, 38 Hun, 418; 39 id. 364; 4 N. Y. Cr. 1; People v. Wiggins, 92 N. Y. 656; 38 Hun, 418; 1 N. Y. Cr. 290; People v. Carr, 3 id. 581; People v. Sands, 5 id. 261; People v. McTameney, 1 id. 437; 30 Hun, 505; 13 Abb. N. C. 56; 66 How. 73; People v. McCallam, 103 N. Y. 587; People v Moran, 54 Hun, 287; 27 N. Y. State Rep'r, 28; 123 N. Y. 256; 33 N. Y. State Rep'r, 397.

§ 532. **Petit larceny.**— Every other larceny is petit larceny.

No accessories, all are principals. Ward v. People, 6 Hill, 144. Proof of value unnecessary. People v. White, 1 N. Y. Cr. 466; People v. Raymond, 2 id. 300; People v. McTameney, 1 id. 437; 30 Hun, 505; 13 Abb. N. C. 56; 66 How. 73; Justices, etc., v. People, 90 N. Y. 12; People v. Beach, 87 id 508.

§ 533. **Grand larceny, how punished.**— Grand larceny in the first degree is punishable by imprisonment for a term not exceeding ten years. [As Amd. by Ch. 662, Laws 1892. Took effect May 17, 1892.]

People, *ex rel.* Knowlton, v. Sadler, 2 N. Y. Cr. 439.

§ 534. **Grand larceny in second degree, how punished.**—Grand larceny in the second degree is punishable by imprisonment for a term not exceeding five years. [As Amd. by Ch. 662, Laws 1892. Took effect May 17, 1892.]

People v. Poucher, 30 Hun, 577; 1 N. Y. Cr. 546.

§ 535. **Petit larceny a misdemeanor.**— Petit larceny is a misdemeanor.

Punishable under § 15, *supra*. *Ex parte* Hallenbeck, 65 How. Pr. 401. See Code Cr. Proc., § 56. Punishment. People, *ex rel.* Knowlton, v. Sadler, 2 N. Y. Cr. 438; 17 W. Dig. 492; People v. McTameney, 30 Hun, 505; 13 Abb. N. C. 56; 1 N. Y. Cr. 441; 66 How. 73; People v. Finn, 87 N. Y. 533; People v. Rawson, 61 Barb. 619; People v. Dutcher, 83 N. Y. 240; People v. Trumble, 1 N. Y. Cr. 442; People v. Raymond, 2 id. 300; People, *ex rel.* Laughlin, v. Finn, 26 Hun, 59.

§ 536. **Completed unissued instruments property.**— All the provisions of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or

delivered by the maker thereof to any person as a purchaser or owner.

Unissued bank bills. People v. Wiley, 3 Hill, 194. Unindorsed draft. People v. Phelps, 49 How. Pr. 457; S. C., 6 Hun, 401; 72 N. Y. 334. Undelivered satisfaction-piece. People v. Stevens, 38 Hun, 62; People v. Ward, 3 N. Y. Cr. 483; People v. Jackson, 8 Barb. 637.

§ 537. **Severance of fixture, etc., larceny.**— All the provisions of this chapter apply to cases where the thing taken is a fixture or part of the realty, or any growing tree, plant, or produce, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at a previous time.

See § 640, sub. 3, *post*. See Code Cr. Proc., § 56.

§ 538. **Keeping wrecked goods, a misdemeanor.**—A person, who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land, or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of a misdemeanor.

Dayton's case, 2 C. H. Rec. 154, 167.

§ 539. **Lost property.**— A person, who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to find the owner and restore the property to him, is guilty of larceny.

People v. Anderson, 14 Johns. 294; People v. Swan, 1 Park. 9; People v. Cogdell, 1 Hill, 94; People v. McGarren, 17 Wend. 460; People v. Kaatz, 3 Park. 129; State v. McCann, 19 Mo. 249; State v. Martin, 28 id. 530; Pritchert v. State, 2 Sneed, 285; Tanner's case, 14 Gratt. 635. What is lost property. Mayor v. Beasly, 21 Ala. 240; State v. McCann, *supra*. Must be with intent to permanently deprive owner of property. Dodd v. Hamilton, 2 Taylor, 31; State v. Hawkins, 8 Porter, 461; Smith v. Schultz, 1 Scam. 490; Com. v. Low, Thach. C. C. 477; Felter v. State, 9 Yerg. 397; State v. Ledford, 67 N. C. 60; Johnson v. State, 36 Tex. 375; U. S. v. Durkee, 1 McAllister C. C. 196; State v. York, 5 Harring. 493; State v. Self, 1 Bay, 242; State v. South, 4 Dutch. 28. Finder. State v. Western, 9 Conn. 527; State v. Pratt, 20 Iowa, 267; State v. Ferguson, 2 McMullin, 502. *Contra*, Porter v. State, 1 Mart. & Yerg. 226; Pritchett v. State, 2 Sneed, 285; Pyland v. State, 4 id. 357; State v. Cummings, 33 Conn. 260. Finder acting in good faith. Hunt v. Com., 13 Gratt. 757; Tanner v. Com., 14 id. 635; Randall v. State, 4 Smed. & Marsh. 349; People v. Anderson, 14 Johns. 293. See State v. England, 8 Jones, 399; Com. v. Titus, 116 Mass. 42; Ransom v. State, 22 Conn. 153; State v. Roper, 3 Dev. 473; Tracy v. Seamans, 7 N. Y. State Rep'r, 146; Bailey v. State, 52 Ind. 462; 21 Am. Rep. 182; Reed v. State, 8 Tex. App. 40; 34 Am. Rep. 732; People v. Seaton, 39 N. Y. State Rep'r, 485; 15 N. Y. Supp. 272.

§ 540. **Bringing stolen goods into state, larceny.**— A person, who having, at any place without the state, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed within the state. Complaint may be made and the indictment found and tried, and the offense may be charged to have been committed, in any county into or through which the stolen property is brought.

People v. Burke, 11 Wend. 129; Haskins v. People, 16 N. Y. 344; People v. Williams, 24 Mich. 156; 9 Am. Rep. 119; Stanley v. State, 24 Ohio St. 166; 15 Am. Rep. 604.

See sub. 2, § 16, *ante*.

§ 541. **Conversion by trustee, larceny; how punished.**—A person acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who secretes, withholds, or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his office, employment, or appointment, is guilty of grand or petit larceny in such degree as is herein prescribed, with reference to the amount of such property; and upon conviction, in addition to the punishment in this chapter prescribed for such larceny, may be adjudged to pay a fine, not exceeding the value of the property so misappropriated or stolen, with interest thereon from the time of the misappropriation, withholding, or concealment, and twenty per centum thereupon, in addition, and to be imprisoned for not more than five years in addition to the term of his sentence for larceny, according to this chapter, unless the fine is sooner paid.

Bartow v. People, 18 Hun, 22; Matter of Bushnell, 17 N. Y. State Rep'r, 827; Thacher v. Hope Cem. Assn., 126 N. Y. 511; 38 N. Y. State Rep'r, 521.

§ 542. **Disposition of fine.**—So much of the fine authorized in the last section to be imposed, as does not exceed the amount or value of the property taken, appropriated, or stolen, with interest thereupon from the time of the commission of the offense, and a reasonable sum to defray the expenses of collecting the same, to be fixed by the Supreme Court, must, when received or collected, be paid to the county treasurer of the county where the conviction was had, for the benefit of the person injured or defrauded, or whose property the offender took, misappropriated, or concealed, or his representative or assignee; and must be paid over to him by the county treasurer, upon the order of the Supreme Court, made after notice to the district attorney of the county.

§ 543. **Remission of fine.**—In case of the payment of the value of the property stolen or taken, with interest, by the person convicted, or of the collection of the same by civil action, the court may, in its discretion, upon application by such person, and such notice to other persons interested, and to the district attorney of the county, as the court may direct, remit the fine imposed, pursuant to the last section, except the additional allowance for expenses.

§ 544. **Verbal false pretense not larceny.**—A purchase of property by means of a false pretense is not criminal, where the false pretense relates to the purchaser's means or ability to pay, unless the pretense is made in writing and signed by the party to be charged.

Watson v. People, 87 N. Y. 561; 26 Hun, 76; People v. Moore, 37 id. 93; 3 N. Y. Cr. 468; People v. Dumar, 3 N. Y. State Rep'r, 90; 42 Hun, 86; 5 N. Y. Cr. 55; People v. Page, 22 N. Y. State Rep'r, 278.

§ 545. **Value of evidence of debt, how ascertained.**—If the thing stolen consists of a written instrument, being an evidence of debt, other than a public or corporate certificate, scrip, bond, or security having a market value, or being the transfer of or evidence of title to any property, or of the creating, releasing, or discharging, of any demand, right, or obligation, the amount of money due thereupon or secured to be paid thereby, and remaining unsatisfied, or which, in any contingency, might be collected thereupon or thereby, or the value of the property transferred or affected, or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be, is deemed the value of the thing stolen.

Value of bank notes. People v. Fallon, 6 Park. 256. Id., foreign. People v. Caryl, 12 Wend. 547; Johnson v. People, 4 Den. 364; Low v. People, 2 Park. 37.

§ 546. **Id.; passenger ticket.** — If the thing stolen is a ticket, paper or other writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket, entitling a person to a like passage, is usually sold, is deemed the value thereof.

§ 547. **Id.; of other articles.**—In every case not otherwise regulated by statute, the market value of the thing stolen is deemed its value.

Johnson v. People, 4 Den. 364. Value. 1 N. Y. Cr. 466; People v. McCallam, 108 N. Y. 587.

§ 548. **Claim of title, ground of defense.** — Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly under a claim of title preferred in good faith, even though such claim is untenable. But this section shall not excuse the retention of the property of another, to offset or pay demands held against him.

People v. Thomas, 3 Hill, 169; People v. Smith, 5 Park. 490; People v. Grimm, 3 N. Y. Cr. 317; Cansey v. State, 79 Ga. 564; 11 Am. St. Rep. 447; Meade v. State, 25 Neb. 444; Graves v. State, 25 Tex. App. 383.

§ 549. **Intent to restore property.**—The fact that the defendant intended to restore the property stolen or embezzled, is no ground of defense, or of mitigation of punishment, if it has not been restored before complaint to a magistrate, charging the commission of the crime.

§ 550. **Knowingly receiving.**—A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this chapter, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding, any property, knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this chapter, if such misappropriation had been committed within the state, whether such property were so stolen or misappropriated within or without the state, is guilty of criminally receiving such property, and is punishable, by imprisonment in a state prison for not more than five years,

or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

Must be fraudulent intent. People v. Johnson, 1 Park. 564; Rice v. State, 3 Heisk. 215. Stipulating for percentage for return of stolen property, constitutes offense of receiving. People v. Wiley, 3 Hill, 194. See Wills v. People, 3 Park. 473; State v. Scovel, 1 Mills, 274; People v. Slaken, 40 Cal. 599; State v. Teideman, 4 Strobh. 300; State v. Bushing, 69 N. C 29. Possession not necessary. State v. St. Clair, 17 Iowa, 149; State v. Turner, 19 id. 144; Miller v. People, 13 W. D. 260; id., 25 Hun, 473; People v. Dowling, 84 N. Y. 479; Copperman v. People, 56 id. 591; People v. Shulman, 80 id. 374; Coleman v. People, 55 id. 82; Goldstein v. People, 82 id. 231; People v. Stein, 1 Park. 202; Cohen v. People, 5 id. 330; People v. Brien, 53 Hun, 490; People v. Weldon, 111 N. Y. 574; 20 N. Y. State Rep'r, 114; Com. v. Sullivan, 136 Mass. 170; State v. Ward, 49 Conn. 429.

§ 551. **Id.; averment and proof.** — It is not necessary to aver, in an indictment for an offense specified in the last section, nor to prove upon the trial thereof, that the principal who stole the property has been convicted, or is amenable to justice.

Levy v. People, 19 Hun, 83; People v. Caswell, 21 Wend. 86; People v. Brien, 53 Hun, 497; 25 N. Y. State Rep'r, 239; 6 N. Y. Cr. 166.

CHAPTER V.

EXTORTION AND OPPRESSION.

SEC. 552. "Extortion" defined.
553. What threats may constitute extortion.
554. Punishment of extortion in certain cases.
555. Compulsion to execute instrument.
556, 557. Oppression and extortion committed under color of official right.
558. Blackmail.
559. Written threat.
560. Attempts to extort money, or property, by verbal threats.
561. Unlawful threat referring to act of third person.

§ 552. **"Extortion" defined.** — Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

People v. Whaley, 6 Cow. 661; Williams v. State, 2 Sneed, 160; Com. v. Mitchell, 3 Bush, 25; Com. v. Bagley, 7 Pick. 246; Ming v. Truett, 1 Mont. 322; People v. Wilzig, 4 N. Y. Cr. 403; People v. Kostka, id. 429; People v. Cadman, 57 Cal. 562; People v. Barondess, 41 N. Y. State Rep'r, 659.

§ 553. **What threats may constituute extortion.**—Fear, such as will constitute extortion, may be induced by a threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family; or
2. To accuse him, or any relative of his or any member of his family, of any crime; or
3. To expose, or impute to him, or any of them, any deformity or disgrace; or
4. To expose any secret affecting him or any of them.

See § 254, *supra*. People v. Brennan, 30 Mich. 460; State v. Bruce, 26 Me. 71; Brabham v. State, 18 Ohio (N. S.), 485; People v. Barondess, 41 N. Y. State Rep'r, 659.

§ 554. **Punishment of extortion in certain cases.**—A person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or a threat mentioned in the last two sections, is punishable by imprisonment not exceeding five years.

People v. Barondess, 41 N. Y. State Rep'r, 659.

§ 555. **Compulsion to execute instrument.**—The compelling or inducing of another, by such force or threat, to make, subscribe, seal, execute, alter, or destroy any valuable security, or instrument or writing, affecting or intended to affect any cause of action or defense or any property, is an extortion of property, within the last two sections.

§ 556. **Oppression and extortion committed under color of official right.**—A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense or color of official authority,

1. Arrests another, or detains him against his will; or
2. Seizes or levies upon another's property; or
3. Dispossesses another of any lands or tenements; or
4. Does any other act, whereby another person is injured in his person, property, or rights;

Commits oppression and is guilty of a misdemeanor.

See §§ 118, 119, 120, *supra*.

§ 557. **Same.**—A public officer who asks, or receives, or agrees to receive, a fee or other compensation for his official service, either

1. In excess of the fee or compensation allowed to him by statute therefor; or
2. Where no fee or compensation is allowed to him by statute therefor;

Commits extortion and is guilty of a misdemeanor.

See §§ 48, 49, 50, *supra*.

§ 558. **Blackmail.**—A person who, knowing the contents thereof, and with intent, by means thereof, to extort or gain any money or other property, or to do, abet, or procure any illegal or wrongful act, sends, delivers, or in any manner causes to be forwarded or received, or makes and parts with for the purpose that there may be sent or delivered, any letter or writing, threatening

1. To accuse any person of a crime; or
2. To do any injury to any person or to any property; or
3. To publish or connive at publishing any libel; or
4. To expose or impute to any person any deformity or disgrace;

Is punishable by imprisonment for not more than five years.

See § 254, *supra*; People v. Griffin, 2 Barb. 427; People v. Thompson, 2 N. Y. Cr. 520; 97 N. Y. 313; People v. Wightman, 104 id. 598, aff'g 43 Hun, 358; Edsall v. Brooks, 17 Abb. 226; People v. Gillian, 50 Hun, 37.

§ 559. **Relative to the sending of threatening letters.**—A person who knowing the contents thereof, sends, delivers, or in any manner causes to be sent or received any letter or other writing threatening to do any unlawful injury to the person or property of another, [or

any person who shall knowingly send or deliver or shall make and for the purpose of being delivered or sent, shall part with the possession of any letter, postal card or writing with or without a name subscribed thereto or signed with a fictitious name or with any letter, mark or other designation, with intent thereby to cause annoyance to any person], is guilty of misdemeanor. [AMD. CH. 120 of 1891.]

People v. Griffin, 2 Barb. 427; Skiff v. People, 2 Park. 139; Biggs v. People, 8 Barb. 547; People v. Cadman, 57 Cal. 562.

§ 560. **Attempts to extort, etc., by verbal threats.**—A person who under circumstances not amounting to robbery, or an attempt at robbery, with intent to extort or gain any money or other property, verbally makes such a threat as would be criminal under either of the foregoing sections of this chapter, if made or communicated in writing, is guilty of a misdemeanor.

§ 561. **Unlawful threat referring to act of third person.**—It is immaterial whether a threat, made as specified in this chapter, is of things to be done or omitted by the offender, or by any other person.

CHAPTER VI.

FALSE PERSONATION, AND CHEATS.

SEC. 562. Falsely personating another.
563. Limitations as to indictment.
564. Receiving property in false character.
565. Personating officers, policemen, and other persons.
566. Obtaining signature by false pretenses.
567. Obtaining property for charitable purposes.
568. Obtaining negotiable evidence of debt by false pretenses.
569. Using false check or order for payment of money.
570. Obtaining employment, etc.
571. Secreting personal property.
572. Pawning, etc., borrowed property.
573. Personating beneficiary of entrance ticket.
574. Mock auctions.

§ 562. **Falsely personating another.**—A person who falsely personates another, and, in such assumed character,

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of the latter; or

2. Becomes bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or

3. Confesses a judgment; or

4. Subscribes, verifies, publishes, acknowledges, or proves a written instrument, which by law may be recorded, with intent that the same may be delivered or used as true; or

5. Does any other act, in the course of any action or proceeding, whereby, if it were done by the person falsely personated, such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender, or to another person;

Is punishable by imprisonment in a state prison for not more than ten years.

§ 563. **Id.; limitations as to indictments.**— An indictment cannot be found, for the crime specified in subdivision first of the last section, except upon the complaint of the person injured, if there be any such person living, and within two years after the perpetration of the crime.

§ 564. **Receiving property in false character.**— A person, who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent, as for larceny of the money or property so received.

§ 565. **Personating officers, etc.**— A person who falsely personates a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character does an act, purporting to be official, whereby another is injured or defrauded, is guilty of a misdemeanor.

Curtin v. People, 26 Hun, 564, affirmed; People v. Stetson, 4 Barb. 151; McCord v. People, 46 N. Y. 470.

§ 566. **Obtaining signature by false pretenses.**— A person, who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.

See §§ 528, 529, 544, *ante*. Signature to deed, must be obtained with intent to cheat and defraud. Brown v. People, 16 Hun, 595. See Thearasson v. People, 20 Hun, 55; S. C., 83 N. Y. 238; Lesser v. People, 12 Hun, 670; Rex v. Jackson, 3 Camp. 370; Rex v. Parker, 3 C. & P. 825; People, *ex rel.* Phelps, v. Oyer, etc., 83 N. Y. 436; Watson v. People, 87 id. 561; 26 Hun, 80.

§ 566A. **False pedigree of animals, etc.**—Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society or company or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [ADDED CH. 153 of 1887.]

§ 567. **Id.; for charitable purposes.**— A person, who willfully, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or any money or property, for any alleged or pretended charitable or benevolent purpose, is punishable by imprisonment for not less than one

nor more than three years, or by a fine to an amount not exceeding the value of the money or property obtained, or by both.

People v. Clough, 17 Wend. 351.

§ 568. **Obtaining negotiable evidence of debt by false pretenses.**—If the false token, by which money or property is obtained in violation of sections 566 and 567, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in a state prison not exceeding seven years, instead of by the punishments prescribed by those sections.

People v. Rynders, 12 Wend. 425.

§ 569. **Using false check or order for payment of money.**— The use of a matured cheque, or other order for the payment of money, as a means of obtaining a signature, or money or property, such as is specified in sections 566 and 567, by a person who knows that the drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

See § 529, *ante*. Allen's case, 3 C. H. Rec. 118; Conger's case, 4 id. 65; Van Pelt's case, 1 id. 137; People v. Tompkins, 1 Park. 224; Lesser v. People, 73 N. Y. 78; 12 Hun, 668; Foote v. People, 17 id. 218; People v. Clements, 42 id. 289; 5 N. Y. Cr. 280; People v. Ward, 15 Wend. 231.

§ 570. **Obtaining employment or aid by deception.**— A person who obtains employment, or appointment to any office or place of trust by color or aid of any false or forged letter or certificate of recommendation, or of any false statement in writing as to his name, residence, previous employment or qualification, or any person who shall willfully and intentionally fraudulently represent himself or herself to be a deaf and dumb person in order to collect, receive or otherwise obtain moneys, food, clothing or any thing of value whatsoever, is guilty of a misdemeanor. [AMD. CH. 654 of 1886.]

§ 571. **Secreting personal property.**—A person who, having theretofore executed a mortgage of personal property, or any instrument intended to operate as such, sells, assigns, exchanges, secretes, or otherwise disposes of any part of the property, upon which the mortgage or other instrument is at the time a lien, with intent thereby to defraud the mortgagee, or a purchaser thereof, is guilty of a misdemeanor.

Vaus v. Middlebrook, 3 N. Y. State Rep'r, 277; Millicamp v. People, 14 W. Dig. 252; People, *ex rel.* Stokes, v. Riseley, 38 Hun, 280; 4 N. Y. Cr. 110.

§ 572. **Pawning, etc., borrowed property.**—A person who, without the consent of the owner thereof, sells, pledges, pawns, or otherwise disposes of any property which he has borrowed or hired from the owner, is guilty of a misdemeanor; but this section does not apply to a person leasing or lending property, for a time not exceeding that for which the same was leased or lent to himself. [As AMD. by CH. 692, LAWS 1892. Took effect May 18, 1892. Substitute for § 572 and § 573.]

See § 355, *ante*.

§ 573. **Personating beneficiary of entrance ticket.**—A person who, with intent to wrongfully convert to his own use the benefits secured by any ticket, contract, or other paper or writing, appearing upon its face not negotiable, and which entitles, or purports to entitle the person whose name appears therein, to entrance upon the grounds or premises of a membership corporation, or being thereupon, to remain upon such grounds or premises, falsely personates or attempts to so personate any individual named in such ticket, contract or other paper or writing, as the grantee or beneficiary thereof, is guilty of a misdemeanor. [As AMD. by CH. 692, LAWS 1892. Took effect May 18, 1892.]

§ 574. **Mock auctions.**—A person who obtains money or property from another, or obtains the signature of another to any writing, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in a state prison not exceeding three years, or in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and in addition thereto he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

See § 443, *ante*.

CHAPTER VII.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

SEC. 575. Person willfully destroying vessel, etc.
576. Fitting out or lading any vessel, with intent to wreck the same.
577. Making false manifest, etc.

§ 575. **Person willfully destroying vessel, etc.**—A person, who wrecks, burns, sinks, scuttles, or otherwise injures or destroys a vessel, or the cargo of a vessel, or willfully permits the same to be wrecked, burned, sunk, scuttled, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment for not more than five years.

§ 576. **Fitting out or lading any vessel, with intent to wreck the same.**—A person who fits out any vessel, or who lades any cargo on board of a vessel, who* with intent to permit or cause the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby to defraud or prejudice an insurer or another person, is punishable by imprisonment in the state prison not exceeding ten years. [As AMD. by CH. 662, LAWS 1892. Took effect May 18, 1892.]

§ 577. **Making false manifest, and invoice, etc.**—A person, guilty of preparing, making or subscribing, a false or fraudulent manifest, invoice, bill of lading, ship's register or protest, with intent to defraud another, is punishable by imprisonment in a state prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

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* So in original.

CHAPTER VIII.

MISCONDUCT AND FRAUDS IN RELATION TO INSURANCE CORPORATIONS, ASSOCIATIONS AND SOCIETIES.

SEC. 577a. False statements in application for membership.
577b. Discriminations and rebates by life insurance corporations prohibited.
577c. Acting as agent of life insurance corporation without certificate of authority.
577d. Fire insurance corporations to use standard policy only.
577e. Overcharges by marine insurance agents.
577f. Misconduct of officers and agents of corporations for the insurance of domestic animals.
577g. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.
577h. Misconduct of officers and agents of co-operative insurance companies.
577i. Acts of agents of fire or marine insurance corporations organized in other countries, after revocation of certificate.
577j. Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.
578. Destroying property insured.
579. Presenting false proof of loss in support of claim upon policy of insurance.

§ **577a. False statements in applications for membership.**—Any applicant, officer, agent, solicitor, examining physician, surgeon, or other person, who knowingly or willfully makes any false or fraudulent statement or representation in or with reference to any documentary or other proof for the purpose of obtaining membership in or benefit from any fraternal beneficiary society, order or association, any corporation, association or society transacting the business of life or casualty insurance or both, upon the co-operative or assessment plan, or a corporation for the insurance of domestic animals, is guilty of a misdemeanor. [AS AMD. by CH. 692, LAWS 1892. Took effect May 18, 1892.]

§ **577b. Discriminations and rebates by life insurance corporations prohibited.**— Any life insurance corporation doing business in this state, or any officer or agent thereof, who,

1. Makes any discrimination in favor of individuals of the same class or of the same expectation of life either in the amount of the premium charged or in any return of premiums, dividends or other advantages, or

2. Makes any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued, or

3. Pays or allows, or offers to pay or allow as an inducement to any person to insure, any rebate or premium, or any special favor or advantage whatever, in the dividends to accrue thereon or any inducement whatever not specified in the policy, or

4. Makes any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; or demands or requires a greater premium from such colored persons than is at that time required by such company from white persons of the same age, sex, general condition of health and prospect of longevity; or makes or requires any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored persons in-

sured, or inserts in the policy any condition, or makes any stipulation whereby such person insured shall bind himself, or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577c. **Acting as agent of life insurance corporation without certificate of authority.**— Any person acting as agent, sub-agent or broker of a life insurance corporation doing business in this state, except as agent operating solely on the weekly payment plan of insurance, who solicits or procures applications for insurance without first procuring a certificate of authority from the superintendent of insurance, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577d. **Fire insurance corporations to use standard policy only.** — Any fire insurance corporation, or any officer or agent thereof, who makes, issues, delivers, or offers to deliver any policy of insurance on property in this state, which does not conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form or contract of policy filed in the office of the secretary of state, known and designated as the "Standard fire insurance policy of the state of New York," except as to such exceptions as are specially provided and allowed by law, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five nor more than one hundred dollars for the first offense, and of not less than one hundred or more than two hundred and fifty dollars for each subsequent offense. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577e. **Overcharges by marine insurance agents.** — Any agent, shipper or other person, representing or acting for a marine insurance corporation doing business in this state; who,

1. Charges or receives, directly or indirectly from any person for insurance of any property in transit upon the canals of the state, any greater sum than the regular rates of premium fixed by the corporation for the insurance of such property; or,

2. Demands or receives upon any policy of insurance issued upon any such property, for the business of obtaining such insurance, a sum of money, as compensation or remuneration by way of salary, commission or in any other capacity, which includes in any case, over fifteen per centum of the premium, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577f. **Misconduct of officers and agents of corporations for the insurance of domestic animals.**— Any officer or agent of a corporation organized for the insurance of domestic animals who,

1. Refuses to make any report or perform any duty required by law; or,

2. Intentionally makes any false or fraudulent statement or report, is guilty of a misdemeanor punishable by a fine of not less than one

hundred or more than five hundred dollars. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577g. **Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.**—Any officer, manager, director or agent of a casualty insurance corporation upon the co-operative or assessment plan, organized under the laws of this state, who transfers its risks or assets or any part thereof to or reinsures its risks or any part thereof, in any insurance corporation or association of another state or country which is not, at the time of such transfer or reinsurance authorized by law to do insurance business in this state, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577h. **Misconduct of officers and agents of co-operative insurance companies.**— Any officer, agent or representative of a corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, who,

1. Neglects or refuses to perform any duty required of him by law, or,
2. Intentionally makes any false or fraudulent statement or report, or,
3. Refuses to permit the superintendent of insurance or any examiner duly authorized by him for the purpose, to make an examination of the condition and business, books, papers and vouchers of any such corporation, association or society; or,
4. Thirty days after any such corporation has been notified by the superintendent of insurance to designate some person residing in the same city, village or town where the principal business office within the state of such corporation is located, as a person upon whom service of legal process and papers may be made, as provided by law, collects any money or issues any certificate in carrying on such business, during the failure of such corporation to designate such person; or,
5. Being within this state the agent or representative of any such corporation, association or society, which has neglected or refused to comply with any duty imposed upon it by law, or which has failed or neglected to procure from the superintendent of insurance the certificate of authority to transact business within this state as provided by law, acts as such agent, during such period of default,

Is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577i. **Acts of agents of fire or marine insurance corporation, organized in other countries,—after revocation of certificate.**—Any agent of a fire or marine insurance corporation, incorporated by or existing under the government or laws of another country than the United States, and doing business in this state, who issued any new policy of insurance after having been notified by the superintendent of insurance that the certificate to such corporation to do business within this state has been revoked, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 577j. **Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.**— Any person

acting for himself or for others not having been specially licensed, as provided by law, by the superintendent of insurance, who solicits or procures, or aids in the solicitation or procurement of policies or certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for, any foreign insurance corporation, which has not executed and filed in the office of the superintendent of insurance, a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 578. **Destroying property insured.**— A person who, with intent to defraud or prejudice the insurer thereof, willfully burns, or in any manner injures or destroys property not included or described in section 575, which is insured at the time against loss or damage by fire or by any other casualty, under such circumstances that the offense is not arson in any of its degrees, is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

§ 579. **Presenting false proofs of loss, etc., upon policy of insurance.**—A person who knowing it to be such, either presents or causes to be presented a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss upon a contract of insurance; or

Prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit of proof of loss, or other document or writing with intent that the same may be presented or used in support of such a claim;

Is punishable by imprisonment for not more than five years, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

CHAPTER IX.

FALSE WEIGHTS AND MEASURES.

Sec. 580. Using false weights, measures, etc.
581. Keeping false weights.
582. False weights and measures authorized to be seized.
583. May be tested by committing magistrate, and destroyed or delivered to district attorney.
584. Shall be destroyed after conviction of offender.
585. Stamping false weight or tare, on casks or packages.

§ 580. **Using false weights and measures, etc.**— A person who injures or defrauds another by using, with knowledge that the same is false, a false weight, measure, or other apparatus, for determining the quantity of any commodity, or article of merchandise, or by knowingly delivering less than the quantity he represents, is guilty of a misdemeanor.

See § 406, *ante*. People v. Fish, 4 Park. 206; People v. Fisk, 1 Sheld. 537.

§ 581. **Keeping false weights.**— A person who retains in his possession any weight or measure, knowing it to be false, unless it ap-

pears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used in violation of the last section, is guilty of a misdemeanor.

§ 582. **Id., authorized to be seized.**— A person who is authorized or enjoined by law to arrest another person for a violation of the last two sections, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 583. **May be tested, etc., and destroyed, etc.**— The magistrate to whom any weight or measure is delivered pursuant to the last section, must, upon the examination of the defendant, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he must cause it to be destroyed, or to be delivered to the district attorney of the county in which the defendant is liable to indictment or trial, as the interests of justice in his judgment require.

§ 584. **Shall be destroyed after conviction, etc.**— Upon the conviction of the defendant, the district attorney must cause any weight or measure in respect whereof the defendant stands convicted, and which remains in the possession or under the control of the district attorney, to be destroyed.

§ 585. **Stamping false weight or tare, etc.**—A person who knowingly marks or stamps false or short weights, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

See § 406, *ante*; Com. v. Warren, 6 Mass. 72.

CHAPTER X.

FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

SEC. 586. Fraudulent conveyances.
587. Fraudulent removal of property to prevent levy.
588. Knowingly receiving property.
589. Concealment of effects of insolvent debtor.

§ 586. **Fraudulent conveyances.**—A person who either

1. Becomes a party to a conveyance or assignment of real or personal property, or of an interest therein, with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons; or

2. Being a party or privy to, or knowing of, such a conveyance or assignment so made, willfully puts the same in use as having been made in good faith;

Is guilty of a misdemeanor.

Lapham v. Marshall, 51 Hun, 40; 20 N. Y. State Rep'r, 797; Matter of Peterson, 39 id. 924.

§ 587. **Fraudulent removal of property to prevent levy.** — A person who, with intent to defraud a creditor, or to prevent any of

his property from being made liable for the payment of his debts, or levied upon by an execution or warrant of attachment, removes any of his property, or secretes, assigns, conveys, or otherwise disposes of the same, is guilty of a misdemeanor.

See Code Cr. Proc., § 56. Loomis v. People, 19 Hun, 601; 46 How. 247; Goodenough v. Spencer, 2 S. C. 508. Need not be judgment creditors. People v. Underwood, 16 Wend. 546. *Bona fide* removal of property, no offense. Thomas v People, 19 Wend. 480. See People v. Morrison, 13 Wend. 399; Matter of Peterson, 39 N. Y. State Rep'r, 924.

§ 588 **Knowingly receiving property.** — A person who receives any property from another knowing that the same is transferred or delivered to him in violation of, or with intent to violate, the last section, is guilty of a misdemeanor.

§ 589. **Concealment of effects of insolvent debtor.** — A person who being an applicant, as an insolvent debtor, for a discharge from his debts, or for exoneration or discharge from imprisonment, or having made a general assignment of his property for the payment of his debts, willfully either

1. Conceals any part of his estate or effects, or any book, account, or other writing relative thereto; or
2. Omits to disclose, to the court before which his application is pending, any debt or demand which he has collected, or any transfer of property which he has made, since the presentation of his application; or
3. Fraudulently presents, or authorizes to be presented in his behalf, such an application, in a case where it is not authorized by law; or
4. Makes or presents to the court or officer in support of such an application, a petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain a false statement; or
5. Fraudulently makes and exhibits, or alters, obliterates, or destroys an account or voucher, relating to the condition of his affairs, or an entry or statement in such an account or voucher; or
6. Commits any fraud upon a creditor, to induce him to petition for, or consent to such a discharge; or
7. Conspires with, or induces another fraudulently to consent as creditor to a petition for such discharge, or to practice any fraud in aid thereof;

Is guilty of a misdemeanor.

People v. Morrison, 13 Wend. 399; Ion v. People, 12 Id. 344; Vanderwerken v. People, 6 Id. 530; McButt v. Hirsch, 4 Abb. 441; Gasherie v. Apple, 14 Id. 64; Dickinson v. Benham, 10 Id. 390; 19 Id. 158.

CHAPTER XI.

FRAUDULENT INSOLVENCIES BY CORPORATIONS AND OTHER FRAUDS IN THEIR MANAGEMENT.

SEC. 590. Frauds in the organization of corporations.
591. Fraudulent issue of stock, scrip, etc.
592. Frauds in procuring organization of corporation, or increase of capital.
593. Acting for foreign corporations not authorized to do business in this state.
594. Misconduct of directors of stock corporations.
595. Misconduct of directors of banking corporations.

SEC. 596. Loans made in violation of last section, not invalid.
597. Sale or hypothecation of bank notes by officer, etc.
598. Officer of bank putting excessive number of its notes in circulation.
599. Officer or agent of banking corporation, making guaranty or indorsement, in its behalf, in certain cases.
600. Bank officer overdrawing his account.
601. Receiving deposits in insolvent bank.
602. Unlawful investments by officers of savings banks.
603. Misconduct by directors of monied corporations.
604. Misconduct by banks and bankers.
605. Unlawful discount of bills of foreign banks.
606. Misconduct by officers of banking department.
607. Using dies and plates of extinct state bank.
609. Private banker using sign.
610. Misconduct of officers and directors of stock corporations.
611. Misconduct of officers and employes of corporations.
612. Misconduct of officers and agents of pipe-line corporations.
613. Misconduct at corporate elections.
614. Presumption of knowledge of corporate condition and business, and of assent thereto by directors; definitions.

§ 590. Frauds in the organization of corporations.—A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced;

Is guilty of a misdemeanor. [AS AMD. BY CH. 692, LAWS 1892. Took effect May 18, 1892. Substitute for Penal Code, §§ 590 and 593.]

§ 591. Fraudulent issue of stock, etc.—An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledges or issues, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates,

or other evidence of the transfer or ownership of any such share or shares, is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both. [As Amd. by Ch. 662, Laws 1892. Took effect May 17, 1892.]

§ 592. **Frauds in procuring organization of corporation, etc.**— An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years. [As Amd. by Ch. 662, Laws 1892. Took effect May 17, 1892.]

§ 593. **Acting for foreign corporations not authorized to do business in this state.**— Any person or corporation who acts as agent or representative of any mortgage company or co-operative loan and building association organized outside of this state, while such mortgage company or co-operative loan and building association shall not be authorized under a license of the superintendent of banks to do business in this state, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 594. **Misconduct of directors of stock corporations.**— A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended,

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,
2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or
3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or
4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or
5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock; or
6. To receive any such shares in payment or satisfaction of a debt due to such corporation; or
7. To receive in exchange for the shares, notes, bonds or other evidences of debt of such corporation, shares of the capital stock, notes, bonds or other evidences of debt issued by any other stock corporation engaged in another line of business, unless authorized by law to make such exchange. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

See 15 N. Y. Supp. 811.

§ 595. **Misconduct of directors of banking corporations.**—A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either

1. To make a loan, or discount, by which the whole amount of the loans and discounts of the corporation shall be greater than the amount allowed by law, or, where there is no express statutory limitation of the amount, greater than three times its capital stock then paid in and actually possessed; or

2. To make a loan or discount to any director of such corporation, or upon paper upon which any such director is responsible to an amount exceeding the amount allowed by statute, or where there is no express statutory limitation of the amount, exceeding in the aggregate one-third of the capital stock of such corporation, then paid in and actually possessed,

Is guilty of a misdemeanor.

§ 596. **Loans made in violation of last section, not invalid.**—Nothing in the last section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

§ 597. **Sale or hypothecation of bank notes by officer, etc.**—An officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 598. **Id., putting excessive number of its notes in circulation.**—An officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 599. **Officer of banking corporation making guaranty, etc.**—An officer or agent of any banking corporation, who makes or delivers any guaranty or indorsement on behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

§ 600. **Bank officer overdrawing his account.**—An officer, agent, teller or clerk of any bank, banking association or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes or funds of such bank, is guilty of a misdemeanor.

State v. Timson, 4 Zabr. 478; People v. Clements, 42 Hun, 236; 5 N. Y. State Rep'r, 277; 107 N. Y. 205; 3 N. Y. State Rep'r, 700; People v. Upton, 88 Hun, 107; 4 N. Y. Cr. 455.

§ 601. Receiving deposits in insolvent bank.— An officer, agent, teller or clerk of any bank, banking association or savings bank, and every individual banker or agent, and any teller or clerk of an individual banker, who receives any deposits knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

Atkinson v. Rochester P. Co., 114 N. Y. 175; 23 N. Y. State Rep'r, 155; People v. Moore, 37 Hun, 84; 3 N. Y. Cr. 458.

§ 602. Unlawful investments by officers of savings banks.— Any officer or trustee of a savings bank authorizing or making any investment of the funds of the bank in securities, not authorized by law, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 603. Misconduct by directors of monied corporations.— Every director of a monied corporation who:

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or

2. Willfully does any act as such director which is expressly forbidden by law, or willfully omits to perform any duty imposed upon him as such director by law;

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a monied corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892. Penal Code, §§ 604-606, consolidated.]

§ 604. Misconduct by banks and bankers. —Any monied corporation or individual banker authorized to carry on the business of banking under the laws of this state who;

1. Receives, pays out, gives or offers in payment as money to circulate, or who attempts to circulate as money, any bill, note or other evidence of debt issued or purporting to have been issued by any corporation or individual, situated or residing without this state, and which bill, note or other evidence of debt shall, upon any part thereof, purport to be payable or redeemable at any place or by any corporation or individual within this state; or,

2. Issues, utters or circulates, as money, or in any way, directly or indirectly, aids or assists in the issuing, uttering or circulating as money within this state, of any bank bill, note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual situated or residing without this state; or procures or receives, in any manner whatever, any such bank bill, note or other evidence of debt with intent to issue, utter or circulate, or with intent to aid in issuing, uttering or circulating the same as money within this state; or,

3. Directly or indirectly lends or pays out for paper discounted or purchased any bank bill, note or other evidence of debt, which is not received at par by such corporation or banker for debts due such corporation or banker; or,

4. Issues or puts in circulation any bank bill or note of any such

corporation or banker, unless the same shall be made payable on demand and without interest, except bills of exchange on foreign countries or places beyond the limits or jurisdiction of the United States;

Is guilty of a misdemeanor. Nothing in this section contained shall be construed to prohibit any such corporation or banker from receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business, or to prohibit such corporation or banker from receiving foreign notes from their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law, for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals by which such foreign notes are made, the payment or redemption thereof. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 605. **Unlawful discount of bills of foreign banks.**—Any person, association or corporation within the state who, directly or indirectly, on any pretense whatever, procures or receives or offers to receive from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 606. **Misconduct by officers of banking department.**—The superintendent of banks, or any officer in the banking department who countersigns bills or notes for any person or corporation exceeding the value of the interest-bearing stocks of the state of New York or of the United States, or other securities deposited with such superintendent by such person or corporation on account thereof, is guilty of a felony, punishable by a fine of not less than five thousand dollars or by imprisonment for not less than five years, or by both. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 607. **Using dies and plates of extinct state bank.**—Any person who uses the dies and plates of a state bank in the manufacture of notes and bills, after such bank has become a national bank in pursuance of law, is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 608. **Id.**—[Repealed ch. 377 of 1884.]

§ 609. **Private banker using sign.**—Any person engaged in banking in this state, not subject to the supervision of the superintendent of banks, and not required by law to report to such superintendent, who was not engaged in such banking before May 23, 1885, who

1. Uses an office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes,

blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank;

Is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 610. **Misconduct of officers and directors of stock corporations.**—An officer or director of a stock corporation who:

1. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

2. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share;

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 611. **Misconduct of officers and employes of corporations.**—A director, officer, agent or employe of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

4. Having the custody or control of its books, willfully refuses or neglects to allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same or to take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer;

Is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892. See Penal Code, §§ 602–3.]

§ 612. **Misconduct of officers and agents of pipe-line corporations.**—Any officer, agent or manager of a pipe-line corporation, who:

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or,

2. Charges, accepts or agrees to accept for such receipt, transpor-

tation and delivery, a sum different from the amount fixed by such regulations; or,

3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any device, have or procure any transportation of products over such pipe line at a less rate or charge than is fixed in such regulations;

Is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 613. **Misconduct at corporate elections.**— Any person who:

1. Votes or issues a proxy to vote at any meeting of the stockholders or bondholders, or both, of a stock corporation, upon any stock or bond, if the person in whose behalf such vote is given shall not then have the title to the stock represented by such certificate or to such bond, and shall not have it in his possession and control, notwithstanding such stock or bond shall then stand on the books of such corporation in the name of the person in whose behalf such vote is given; or,

2. Being entitled to vote at such meeting, sells his vote or issues a proxy to vote to any person for any sum of money or thing of value; or,

3. Acts as an inspector of election at any such meeting, and violates an oath taken by him, in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector;

Is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 614. **Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.**— It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this chapter includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

CHAPTER XII.

FRAUDS IN THE SALE OF PASSAGE TICKETS.

SEC. 615. Sale of passage tickets on vessels and railroads, forbidden, except by agents specially authorized.
616. Sales by authorized agents, restricted.
617. Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets.
618. Punishment for violation of the preceding sections.
619. Conspiring to sell passage tickets in violation of law.
620. Conspirators may be indicted, notwithstanding object of conspiracy has not been accomplished.
621. Offices kept for unlawful sale of passage tickets, declared disorderly houses.
622. Owners, pursers, etc., allowed to sell tickets.
623. Station masters, conductors, etc., allowed to sell tickets.
624. What must be stated in passage tickets.
625. Sale of tickets not filled out as required in last section, a misdemeanor.
626. Certain sales and exchanges of passage tickets.
627. "Company" defined.

§ 615. Sale of passage tickets forbidden except by agents.— Repealed.

See Com. v. Wilson, 14 Phila. 384.

§ 616. Sales by authorized agents restricted.— No person except as allowed in section 622 shall ask, take or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railway train, or for the procurement of any ticket or instrument giving or purporting to give a right, either absolutely or upon a condition or contingency, to a passage or conveyance upon a vessel or railway train, or a berth or state-room on a vessel, unless he is an authorized agent within the provisions of the last section; nor shall any person, as such agent, sell or offer to sell any such ticket, instrument, berth or state-room, or ask, take or receive any consideration for any such passage, conveyance, berth or state-room, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the last section, nor for a sum exceeding the price charged at the time of such sale, by the company, owners or consignees of the vessel or railway mentioned in the ticket. But a person who shall have purchased a ticket in good faith for his own passage, and shall have been prevented from using the same, may sell the ticket at any price not greater than the regular rate established therefor, to another purchaser in good faith, for his own use.

§ 617. Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets.— No person other than an agent appointed, as provided in section 615, shall sell, or offer to sell, or in any way attempt to dispose of any order, certificate, receipt or other instrument for the purpose, or under the pretense, of procuring any ticket, or instrument mentioned in section 615, upon any company or line, vessel or railway train therein mentioned. And every such order sold or offered for sale by any agent, must be directed to the company, owners or consignees at their office.

§ 618. **Punishment for fraud on accounts, etc.** — A person guilty of a violation of any of the provisions of the preceding sections of this chapter is punishable by imprisonment in a state prison not exceeding two years, or imprisonment in a county jail not exceeding six months. [AS AMD. BY CH. 662, LAWS 1892. Took effect May 17, 1892.]

§ 619. **Conspiring to sell passage tickets in violation of law.** — All persons who conspire together to sell or attempt to sell, to any person, any passage ticket, or other instrument mentioned in sections 615 and 617, in violation of those sections, and all persons, who, by means of any such conspiracy, obtain, or attempt to obtain any money or other property, under the pretense of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in a state prison not exceeding five years.

§ 620. **Conspirators may be indicted, etc.** — Persons guilty of violating the last section may be indicted and convicted for a conspiracy, though the object of such conspiracy has not been executed.

See § 171, *supra*.

§ 621. **Offices for unlawful sales of passage tickets are disorderly houses.** — All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this chapter are punishable by imprisonment in a county jail for a period not exceeding six months. [AS AMD. BY CH. 662, LAWS 1892. Took effect May 17, 1892.]

§ 622. **Owners, pursers, etc., allowed to sell tickets.** — The provisions of this chapter do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel, any passage tickets upon such vessel.

§ 623. **Station masters, conductors, etc., allowed to sell tickets.** — The provisions of this chapter do not prevent the station master or other ticket agent upon any railway from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

§ 624. **What must be stated in passage tickets.** — A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this state, to any port of any other state or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the

voyage is to commence, the name of the person or persons purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

Enright v. People, 21 How. 383.

§ 625. **Sale of tickets not filled out as required in last section, a misdemeanor.** — A person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 626. **Certain sales and exchanges of passenger tickets.** — A person who,

1. Sells, or causes to be sold, a passage ticket, or order for such ticket on any railway, vehicle or vessel, to any emigrant passenger at a higher rate than one and a quarter cents per mile; or
2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether emigrant or first-class; or
3. Directly or indirectly, by means of false representations, purchases or receives from an emigrant passenger any such ticket; or
4. Procures or solicits any such passenger having such a ticket, to exchange the same for another passenger ticket, or to sell the same and purchase some other passenger ticket; or
5. Solicits or books any passenger arriving at the port of New York from a foreign country, before such passenger has left the vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having emigrant passengers on board, for the purpose of soliciting or booking such passengers, and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship;

Is guilty of a misdemeanor.

§ 627. **"Company" defined.**—The term "company," as used in this chapter, includes all corporations, whether created under the laws of this state, or of the United States, or of those of any other state or nation.

Chicago Dock Co. v. Garrity, 115 Ill. 164.

CHAPTER XIII.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO MERCHANDISE.

SEC. 628. By pipe-line corporations.
629. Issuing fictitious bills of lading, receipts and vouchers.
630. Erroneous bills of lading or receipts, issued in good faith, excepted.
631. Duplicate receipts must be marked "duplicate."
632. Selling, hypothecating or pledging property received for transportation or storage.
633. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.
634. Property demanded by process of law.

§ 628. **By pipe-line corporations.**—A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,

2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificates that have been issued or accepted for the same; or,

3. Having parted with the possession of any commodity and having received therefor an order, voucher receipt or certificate shall reissue the same, or shall not cause it to be canceled by the word "canceled" stamped or printed legibly across the face thereof, and to be filed and recorded by such corporation, as provided by law:

Is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

§ 629. **Issuing fictitious bills of lading, receipts and vouchers.**—A person who:

1. Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher; or,

2. Carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness;

Is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892. Combines Penal Code, §§ 628 and 629.]

§ 630. **Erroneous bills of lading or receipts, issued in good faith, excepted.**—No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

§ 631. **Duplicate receipts must be marked "duplicate."**—A person mentioned in sections 628 and 629, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across

the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 632. **Selling, etc., property received for transportation or storage.**—A person mentioned in sections 628 and 629, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 633. **Bill of lading, etc., to be canceled, etc.**—A person mentioned in section 629, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 634. **Property demanded by process of law.**—The last two sections do not apply to any case where property is demanded by virtue of legal process.

Keyser v. Harbeck, 3 Duer, 373; Zachrisson v. Ahman, 2 Sandf. 68.

CHAPTER XIV.

MALICIOUS MISCHIEFS AND OTHER INJURIES TO PROPERTY.

SEC. 635. Injuries to railroad tracks, etc.
636. Damaging building, etc., by explosion.
637. Burning certain property, how punished.
638. Altering, etc., signal or light for vessel, etc.
639. Injuries to property, etc.
640. Malicious injury and destruction of property.
641. Divulging, etc., telegram, a misdemeanor.
642. Opening or publishing a sealed letter, etc.
643. Affixing advertisement to another's land, etc., how punished.
644. Presumptive evidence against certain persons.
645. Endangering life by maliciously placing explosives near building.
646. Malicious injury to standing crops, when a misdemeanor.
647. Removal of books and works of art from library; willful injury to works of art, ornamental trees, etc.
648. Malicious injury to certain articles in museum, etc., how punished.
649. Destroying, etc., election returns.
650. Property in house of worship, etc.
651. Unlawful interference with gas meter or steam valves.
652. Driving vehicle, etc., on sidewalks.
653. Coercing another person, a misdemeanor.
654. Injury to other property, how punished.

§ 635. **Injuries to railroad tracks, etc.**—A person who:

1. Displaces, removes, injures or destroys any rail, sleeper, switch, bridge, viaduct, culvert, embankment, or structure, or any part thereof attached, appertaining to or connected with any railway, whether operated by steam, horses, or other motive power; or,

2. Places any obstruction upon the track of any such railway; or,

3. Willfully destroys or breaks any guard erected or maintained by a railroad corporation as a warning signal for the protection of its employes; or,

4. Willfully discharges a loaded firearm, or projects or throws a stone or other missile at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or,

5. Willfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, dynamo, motor, locomotive, or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or willfully interferes with or interrupts any motive power used in running such road, or willfully places any obstruction upon the track of such railroad, or willfully discharges a loaded firearm, or projects or throws a stone or any other missile at such railway train or locomotive, car or vehicle, standing or moving upon such railway;

Is punishable as follows:

1. If thereby the safety of any person is endangered, by imprisonment for not more than ten years.

2. In every other case, by imprisonment for not more than three years or by a fine of not more than two hundred and fifty dollars, or both. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892. Substitute for Penal Code, § 635.]

Loomis v. Edgerton, 19 Wend. 419; State v. Kelty, 28 Minn. 421; People v. Dowling, 1 N. Y. Cr. 529.

§ 636. **Damaging building, etc., by explosion.**— A person who unlawfully and maliciously, by the explosion of gunpowder, or any other explosive substance, destroys or damages any building or vessel, is punishable as follows:

1. If thereby the life or safety of a human being is endangered, by imprisonment for not more than ten years;

2. In every other case by imprisonment for not more than five years.

See § 201, *ante*; § 645, *post*.

§ 637. **Burning certain property, how punished.**— A person who willfully burns or sets fire to any grain, grass, or growing crop, or standing timber, or to any building, fixtures or appurtenances to real property of another, under circumstances not amounting to arson in any of its degrees, is punishable by imprisonment for not more than four years.

See § 486, *ante*.

§ 638. **Altering, etc., signal or light for vessel, etc.**— A person who, with intent to bring a vessel, railway engine, or railway train into danger, either

1. Unlawfully or wrongfully shows, masks, extinguishes, alters, or removes a light or other signal; or

2. Exhibits any false light or signal;

Is punishable by imprisonment for not more than ten years.

§ 639. **Injuring telegraph or telephone line.**—A person who willfully or maliciously displaces, removes, injures, or destroys,

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way; or

2. A pier, boom, or dam, lawfully erected or maintained upon any water within the state, or hoists any gate in or about such dam; or

3. A pile, or other material, fixed in the ground and used for securing any sea-bank or sea-walls, or the bank or dam of any river or other water, or any dock, quay, jetty, or lock; or

4. A buoy or beacon, lawfully placed in any waters within the state; or

5. A tree, rock, post or other monument, which has been either erected or marked for the purpose of designating a point in the boundary of the state, or of a county, city, town, or village, or of a farm, tract, or lot of land, or any mark or inscription thereon; or

6. A mile-board, mile-stone, or guide post, erected upon a highway, or any inscription upon the same; or

7. A line of telegraph or telephone, wire or cable, pier or abutment, or the material or property belonging thereto, without lawful authority, or who shall unlawfully and willfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner any message, communication or report passing over it, in this state; or who shall willfully prevent, obstruct or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance or delivery, in this state, of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable, under the control of any telegraph or telephone company doing business in this state; or who shall aid, agree with, employ or conspire with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, or who shall occupy, use a line, or shall knowingly permit another to occupy, use a line, a room, table, establishment, or apparatus or unlawfully do or cause to be done any of the acts hereinbefore mentioned; or

8. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith; or

9. A sewer or drain, or a pipe or main connected therewith, or forming part thereof; or who

10. Destroys or damages with intent to destroy or render useless any engine, machine, tool or implement intended for use in trade or husbandry;

Is punishable by imprisonment for not more than two years. [AMD. CH. 372, LAWS 1892. Took effect May 16, 1892.]

§ 56 of Code of Cr. Proc. Waas v. Stephens, 128 N. Y. 127; 38 N. Y. State Rep'r, 883.

§ 640. **Malicious injury and destruction of property.**—A person who willfully:

1. Cuts down, destroys or injures any wood or timber standing or growing, or which had been cut down and is lying on lands of another, or of the people of the state; or,

2. Cuts down, girdles or otherwise injures a fruit, shade or ornamental tree standing on the lands of another, or of the people of the state; or,

3. Severs from the freehold of another, or of the people of the state, any produce thereof, or anything attached thereto; or,

4. Digs, takes or carries away without lawful authority or consent from any lot of land in any city or incorporated village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil or stone; or,

5. Enters without the consent of the owner or occupant any orchard, fruit garden, vineyard or ground whereon is cultivated any fruit, with intent to take, injure or destroy anything there growing or grown; or,

6. Cuts down, destroys or in any way injures any shrub, tree or vine being or growing within any such orchard, garden, vineyard or upon any such ground, or any building, framework or erection thereon; or,

7. Maliciously injures any ice upon any waters from which ice is taken as an article of merchandise with intent to injure the owner thereof, or enters or skates upon any pond or body of water not navigable, kept and used for the purpose of taking ice therefrom as an article of merchandise, and upon or adjoining which a notice has been placed in a conspicuous position forbidding such entry, and stating the purpose for which said body of water is kept or used, or puts or throws upon or into any such pond or body of water any stick, stone or other substance to the injury of the ice or water; or,

8. Unlawfully takes or carries away, or interferes with, or disturbs by any means the oysters or other shell-fish of another, legally planted upon the bed of any river, bay, sound or water; or removes, pulls up or destroys any stake designating or marking out the legally planted oyster bed of another; or,

9. Intrudes or places any hovel, shanty or building upon, or within the limits of any lot or piece of land within any incorporated city or village, without the consent of the owner, or within the boundaries of any street or avenue within such city or village; or,

10. Kills, wounds or traps any bird, deer, squirrel, rabbit or other animal within the limits of any cemetery or public burying ground, or of any public park or pleasure ground, or removes the young of any such animal, or the eggs of any such bird, from any cemetery, park or pleasure ground, or exposes for sale, or knowingly buys or sells any bird or animal so killed or taken; or,

11. Drives or leads along a public highway a wild and dangerous animal, or a vehicle or engine propelled by steam, except upon a railroad, along a public highway, or causes or directs such animal, vehicle or engine to be so driven, led, or to be made to pass, unless a person of mature age shall precede such animal, vehicle or engine by at least one-eighth of a mile, carrying a red light, if in the night time, and gives warning to all persons whom he meets traveling such highway, of the approach of such animal, vehicle or engine; or,

12. Takes or attempts to take, without the consent of the owner of any lake or pond, any fish from the waters thereof, provided such lake or pond is so situated that fish cannot pass thereinto from the waters of any other lake, pond or stream, either public or owned by other persons; or without the consent of the owner of any such lake or pond, places therein any piscivorous fish or any poison or other

substance injurious to the health of fish, or lets the waters out of any such lake or pond with intent to take fish therefrom or to harm fish therein;

Is punishable by imprisonment not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or both. [As AMD. BY CH. 692, LAWS 1892. Took effect May 18, 1892.]

See §§ 195, 196, 467, 537, *supra;* § 646, *post.* See Code Cr. Proc., § 56; Comfort v Fulton, 39 Barb. 56; People v. Blake, 1 Wh. C. C.490. Injury to animals. People v. Smith, 5 Cow. 258; State v. Wilson, 3 Mo. 125; Bock v. State, 50 Ind. 281. Claim of title. Wendson v. State, 13 id. 375; Palmer v. State, 45 id. 388; State v. Robinson, 3 Dev. & Batt. 130; State v. Leavitt, 32 Me. 183; People v. Moody, 5 Park. 568; State v. Council, 1 Overt. 305; Resp. v. Teischer, 1 Dall. 335. Under claim of right. Goforth v. State, 8 Humph. 37; Sattler v. People, 59 Ill. 68; Wait v. Green, 5 Park. 185.

Sub. 2. People v. Horr, 7 Barb. 9.

Sub. 3. Anderson v. How, 116 N. Y. 341; 26 N. Y. State Rep'r, 790; Thaule v. Krekeler, 81 N. Y. 428; Marks v. Townsend, 97 id. 590; Bulkeley v. Ketaltas, 6 id. 384; Heine v. Blair, 62 id. 24; Fagnan v. Knox, 66 id. 525; Com. v. Snelling, 15 Pick. 337; Com. v. Williams, 110 Mass. 401; Com. v. Kneeland, 20 Pick. 245; Foshay v. Furguson, 2 Den. 617; Carl v. Ayers, 53 N. Y. 14.

Sub. 5. Kilpatrick v. People, 5 Den. 277.

Sub. 8. People v. Decker, 33 N. Y. State Rep'r, 957; 10 N. Y. Supp. 676.

Sub. 9. People v. Upton, 29 N. Y. State Rep'r, 778; 9 N. Y. Supp. 684.

§ 641. **Divulging, etc., telegram, a misdemeanor.** — A person who, either

1. Wrongfully obtains, or attempts to obtain, any knowledge of a telegraphic message by connivance with a clerk, operator, messenger, or other employe of a telegraph company; or

2. Being such clerk, operator, messenger or other employe, willfully divulges, to any but the persons for whom it was intended, the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or willfully refuses or neglects duly to transmit or deliver the same;

Is punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

§ 642. **Opening and publishing a sealed letter, etc.** — A person who willfully and without authority, either

1. Opens or reads, or causes to be opened or read, a sealed letter or telegram; or

2. Publishes the whole or any portion of such a letter or telegram, knowing it to have been opened or read without authority;

Is guilty of a misdemeanor.

Noulis case, 3 C. H. Rec. 13; U. S. v. Eddy, 1 Bis. 227; McCormack v. Perry, 47 Hun, 71; United States v. Hilbury, 29 Fed. Rep'r, 705.

§ 643. **Affixing advertisement to another's land, etc., how punished.** — A person who places upon or affixes to, or causes or procures to be placed upon or affixed to, real property not his own, or a rock, tree, wall, fence, or other structure thereupon, without the consent of the owner, any words, characters, or device, as a notice of, or reference to, any article, business, exhibition, profession, matter or event, is punishable by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both.

§ 644. **Presumptive evidence against certain persons.** — The placing or affixing of any words, characters, device, or notice, of any article, business, or other thing, to or upon any property or place specified in the last section, is presumptive evidence that the proprietor, vendor, or exhibitor thereof caused or procured the same to be so placed or affixed.

§ 645. **Endangering life by maliciously placing explosive near building.**—A person, who places in, upon, under, against, or near to, any building, car, vessel or structure, gunpowder or any other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstances, that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

See §§ 201, 636, *ante*.

§ 646. **Malicious injury to standing crops, etc.**—A person, who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which punishment is not otherwise prescribed by this Code or by some other statute, is guilty of a misdemeanor.

See § 640, *ante*. People v. Upton, 29 N. Y. State Rep'r, 778; 9 N. Y. Supp. 684.

§ 647. **Removal of books and works of art from library; willful injury of works of art, ornamental trees, etc.**—Any person who,

1. Removes or assists in removing any book, manuscript, map, print, coin, medal, painting or other literary article or work of art from the library building of any reference library company, except for its preservation or repair, or for the purpose of its deposit in some other building of the company, or, being a trustee or officer of such company, consents to the removal thereof; or, upon such removal refuses to permit the same to be restored; or,

2. Not being the owner thereof, and without lawful authority, willfully injures, disfigures, removes or destroys a gravestone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private grounds or upon the street, road or sidewalk, cemetery or public park or place, or removes from any grave in a cemetery any flowers, memorials or other tokens of affection, or other thing connected with them,

Is guilty of a misdemeanor. [As Amd. by Ch. 692, Laws 1892. Took effect May 18, 1892.]

People v. Richards, 44 Hun, 278; 5 N. Y. Cr. 355.

§ 648. **Malicious injury to certain articles in museum, etc.**—A person, who maliciously cuts, tears, defaces, disfigures, soils, obliterates, breaks or destroys, a book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen, or other work of literature or object of art, or curiosity, deposited in a public library, gallery, museum, collection, fair, or exhibition, is punishable by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

§ 649. **Destroying or delaying election returns.**—A messenger appointed by authority of law to receive and carry a report, certificate or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law; and a person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act in this section specified, is punishable by imprisonment in a state prison not exceeding five years. [As Amd. by Ch. 662, Laws 1892. Took effect May 17, 1892.]

People v. Wise, 3 N. Y. Cr. 308; 2 How. (N. S.) 92.

§ 650. **Property in house of worship, etc.** — A person, who willfully and without authority, breaks, defaces or otherwise injures any house of religious worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

See § 14, *ante*.

§ 651. **Unlawful, etc., interference with gas meters.**—A person who willfully, with intent to injure or defraud, connects a tube, pipe, or other instrument or contrivances, with a pipe used for conducting or supplying illuminating gas, fuel or natural gas, in such a manner as to supply such gas to any burner or orifice, where the same can be burned or used without passing through the meter or instrument provided for registering the quantity consumed; or who willfully, with intent to injure or defraud, obstructs, alters, injures or prevents the action of a meter or other instrument used to measure or register the quantity of illuminating, fuel or natural gas, consumed in a house or apartment, or at an orifice or burner, or by a consumer or other person, or a person other than a state inspector or deputy inspector of gas meters or an employe of the company owning any gas meter, who willfully shall detach or disconnect such meter or make or report any test of, or examine for the purpose of testing any such meter so detached or disconnected is guilty of a misdemeanor.

A person who willfully with intent to injure or defraud either,

1. In any manner whatever, changes, extends or alters, any service or other pipe, or attachment of any kind, connecting or through which, natural or artificial gas is furnished from the gas mains or pipes of any person, company or corporation, without first procuring from said person, company or corporation written permission to make such change, extension or alteration; or

2. Makes any connection or reconnection, with the gas mains or service pipes of any person, company or corporation furnishing to consumers natural or artificial gas, or turns on or off, or in any manner interferes with any valve or stop-cock or other appliances belonging to such person, company or corporation, connected with its service or other pipes or enlarges the orifice of mixers or uses natural gas for heating purposes except through mixers, without first procuring from such person, company or corporation, a written permit to turn on or off such stop-cock or valve, or to make such connections

or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stop-cocks, or other appliances of such person, company or corporation, as the case may be; or

3. Retains possession of, or refuses to deliver any mixer or mixers, or other appliances which may be, or may have been loaned or rented to them by any person, company or corporation, for the purpose of furnishing gas through the same, or who sells, loans, or in any manner disposes of the same to any person or persons, other than the said person, company or corporation entitled to the possession of the same; or

4. Sets on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person, company or corporation, in conveying gas to consumers, or interferes in any manner with the wells, pipes, mains, gate boxes, valves, stop-cocks, or any other appliances, machinery or property of any person, company or corporation engaged in furnishing gas to consumers, unless employed by, or acting under the authority and direction of such person, company or corporation, is guilty of a misdemeanor, and punishable by imprisonment for not more than one year or a fine of not more than one hundred dollars or by both such fine and imprisonment. [As Amd. by Ch. 699, Laws 1892. Took effect May 19, 1892.]

See § 15, *ante*. People v. McTameney, 30 Hun, 505; 1 N. Y. Cr. 441; 13 Abb. N. C. 59; 66 How. 73; Matter of Hallenbeck, 65 id. 401; 1 N. Y. Cr. 437, note.

§ 652. **Driving vehicle, etc., on sidewalks.**—A person who willfully and without authority drives any team, vehicle, cattle, sheep, horse, swine, or other animal along upon a sidewalk is punishable by a fine of fifty dollars, or imprisonment in a county jail not exceeding thirty days, or by both.

Fisher v. Village of Cambridge, 57 Hun, 300; 32 N. Y. State Rep'r, 492; 10 N. Y. Supp. 623.

§ 653. **Coercing another person, etc.**—A person, who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property, or threatens such violence or injury; or

2. Deprives any such person of any tool, implement, or clothing, or hinders him in the use thereof; or

3. Uses or attempts the intimidation of such person by threats or force;

Is guilty of a misdemeanor.

See § 168, sub. 5, *ante*; § 673, *post*. People v. Lenhardt, 4 N. Y. Cr. 317; People v. Crotty, 30 N. Y. State Rep'r, 46; 9 N. Y. Supp. 937.

§ 654. **Injury to property of another, etc.**—A person who unlawfully and willfully destroys or injures any real or personal property of another, or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this state, or without like authority or permission, puts upon or runs any

hand car, or other car, on any railroad track in this state, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this state, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than twenty-five dollars, by imprisonment for not more than four years.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

3 And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof. [AMD. BY CH. 186, LAWS 1892. Takes effect Sept. 1, 1892.]

See § 640, *ante*. Personal property. People v. Moody, 5 Park. 568. Killing cow. People v. Smith, 5 Cow. 258. Injury must result to constitute offense. Wait v. Greene, 5 Park. 185. People v. Woodward, 31 Hun, 58; 2 N. Y. Cr. 37; People v. Kane, 42 N. Y. State Rep'r, 722, rev'g 39 id. 751; 15 N. Y. Supp. 612.

TITLE XVI.

CRUELTY TO ANIMALS.

SEC. 655. Overdriving animal; failing to provide proper sustenance.
656. Abandonment of disabled animal.
657. Failure to provide proper food and drink to impounded animal.
658. Selling or offering to sell or exposing disabled animal.
659. Carrying animal in a cruel manner, a misdemeanor.
660. Animal wantonly poisoned, or attempted to be poisoned, a misdemeanor.
661. Throwing substance injurious to animals in public place, a misdemeanor.
662. Keeping milch cows in unhealthy places and feeding them with food producing unwholesome milk a misdemeanor.
663. Transporting animals for more than 24 consecutive hours a misdemeanor.
664. Setting on foot fights between birds and animals, a misdemeanor.
665. Keeping, etc., a place where animals are fought, a misdemeanor.
666. Running horses on highway, a misdemeanor.
667. Leaving state to elude provisions of this Title.
668. Fines and penalties to be paid over to a society
669. Definitions.

§ 655. Overdriving animal; failing to provide proper sustenance.—A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

See Code Cr. Proc., § 66. Cruel mode of slaughtering, indictable. Davis v. Society, etc., 16 Abb. Pr. (N. S.) 73. Servant acting under master's order liable.

People v. Tinsdale, 10 Abb. Pr. (N. S.) 374. See Broadway Stage Co. v. Society, etc., 15 Abb. Pr. (N. S.) 51; People v. Brunell, 48 How. Pr 433. Using dog in tread-mill. People v. Sp. Sess. of N. Y., 4 Hun, 441. See Warren v. Perry, 14 Hun, 337. See Ross' case, 3 C. H. Rec. 191; People v. Stokes, 1 Wh. C. C. 111; Morris' case, 6 C. H. Rec. 62; Lashine's case, 4 id. 26; Davis v. Am. Soc., etc., 75 N. Y. 363. Stage horse cases. 15 Abb. Pr. (N. S.) 59. Pigeon shooting. Paine v. Bergh, 1 C. C. R. 160. Dishorning cattle. 40 Alb. L. J. 270; Callaghan v. Society, 37 Eng. Rep. 813.

§ 656. **Abandonment of disabled animal.**— A person being the owner or possessor, or having charge or custody of a maimed, diseased, disabled or infirm animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows it to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. Any agent or officer of the American Society for the Prevention of Cruelty to Animals, or of any society duly incorporated for that purpose, may lawfully destroy or cause to be destroyed any animal found abandoned and not properly cared for, appearing in the judgment of two reputable citizens called by him to view the same in his presence, to be glandered, injured or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent of said society may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place of custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon. [AMD. CH. 144 of 1888, and again CH. 490 of 1888.]

§ 657. **Failure to provide proper food and drink to impounded animal.**—A person who having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor.

§ 658. **Selling or offering to sell or exposing disabled animal.**—A person who willfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is guilty of a misdemeanor

Fisher v. Clark, 41 Barb. 329.
See 17 Alb. L. J. 177.

§ 659. **Carrying animal in a cruel manner, a misdemeanor.**— A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

See § 663, *post*.

§ 660. **Animal wantonly poisoned or attempted to be poisoned, a misdemeanor.** — A person who unjustifiably administers any

poisonous or noxious drug or substance to an animal, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal, whether such animal be the property of himself or another, is guilty of a misdemeano

See Code Cr. Proc., § 56.

§ 661. **Throwing substances injurious to animals in public place, a misdemeanor.** — A person who willfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor. [AMD. CH. 523 of 1885.]

See 25 Abb. N. C. 40, note; People v. Sheridan, 15 N. Y. State Rep'r, 989.

§ 662. **Keeping milch cows in unhealthy places, and feeding them with food producing unwholesome milk, a misdemeanor.**— A person who keeps a cow or any animal for the production of milk, in a crowded or unhealthy place, or in a diseased condition, or feeds such cow or animal upon any food that produces impure or unwholesome milk, is punishable by a fine not less than fifty dollars, or imprisonment not exceeding one year, or by both.

Flanders v. People, 4 Alb. L. J. 316.

§ 663. **Transporting animals for more than twenty-four consecutive hours, a misdemeanor.** — A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours, without unloading for rest, water and feeding, during ten consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee and shall have a lien thereon for such expense.

Hastings v. N. Y., O. & W. R. Co., 25 N. Y. State Rep'r, 250; 6 N. Y. Supp. 837, 838.

§ 664. **Setting on foot fights between birds and animals, a misdemeanor.** — A person who sets on foot, instigates, promotes, or carries on, or does any act as assistant, umpire, or principal, or is a witness of, or in any way aids in or engages in the furtherance of any fight between cocks or other birds, or dogs, bulls, bears, or other animals, premeditated by any person owning, or having custody of such birds or animals, is guilty of a misdemeanor punishable by fine not less than ten dollars, nor more than one thousand dollars, or by imprisonment not less than ten days nor more than one year, or both.

§ 665. **Keeping pit, etc.**— A person who keeps or uses, or is in any manner connected with, or interested in the management of, or re-

ceives money for the admission of any person to, a house, apartment, pit or place kept or used for baiting or fighting any bird or animal, and any owner or occupant of a house, apartment, pit or place who willfully procures or permits the same to be used or occupied for such baiting or fighting, is guilty of a misdemeanor. Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law. [AMD. CH. 144 of 1888.]

People v. Klock, 48 Hun, 275.

§ 666. **Running horses on highway, etc.**— A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes, or permits, them to run, is guilty of a misdemeanor.

See Code Cr. Proc., §§ 56, 57.

§ 667. **Leaving state to elude provisions of this title.**— A person who leaves this state with intent to elude any of the provisions of this title or to commit any act out of this state which is prohibited by them, or who, being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state.

§ 668. **Fines and penalties, etc.** — All fines, penalties or forfeitures imposed or collected for a violation of the provisions of this title, or of any act for the prevention of cruelty to animals, now in force or hereafter passed, must be paid on demand to the American Society for the Prevention of Cruelty to Animals; except where the prosecution shall be instituted or conducted by a society for the prevention of cruelty to animals duly incorporated under the general laws of this state, in which case such fine, penalty or forfeiture must be paid on demand to such society. A constable or police officer must, and any agent or officer of any of said societies may, arrest and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of this title. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct any such officer or agent in the discharge of his duty shall be guilty of a misdemeanor. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals, and may aid in presenting the law and facts before such court, tribunal, or magistrate in any proceeding taken. The officers and agents of all duly incorporated societies for the prevention of cruelty to animals or children

are hereby declared to be peace officers within the provisions of section one hundred and fifty-four of the Code of Criminal Procedure. [As Amd. Ch. 144 of 1888, and again Ch. 490 of 1888.]

Stage Horse cases, 15 Abb. Pr. (N. S.) 59; American Society, etc., v. Cohoes, 4 N. Y. State Rep'r, 808; 25 W. Dig. 229.

§ 669. **Definitions.**—1. The word "animal," as used in this Title, does not include the human race, but includes every other living creature;

2. The word "torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted;

3. The words "impure and unwholesome milk" include all milk obtained from animals in a diseased or unhealthy condition, or who are fed on distillery waste, usually called "swill" or upon any substance in a state of putrefaction or fermentation.

People v. Klock, 48 Hun, 275; Reg. v. Brown, 41 Alb. L. J. 425; Com. v. Turner, 145 Mass. 300.

Sub. 3. People v. Cipperly, 101 N. Y. 634; 3 E. R. 558, rev'g 37 Hun, 320; 4 N. Y. Cr. 69, on dissenting opinion at General Term; People v. Schaeffer, 41 Hun, 23; 2 N. Y. State Rep'r, 705; People v. Nobles, 1 N. Y. Cr. 459; Com. v. Smith, 9 E. R. 86; Com. v. Spear, id. 89.

TITLE XVII.

Of Miscellaneous Crimes.

Sec. 670. Attorneys forbidden to defend criminal prosecutions carried on by their partners, or formerly by themselves.
671. Attorneys may defend themselves.
672. Fraudulently presenting bills or claims to public officers for payment.
673. Endangering life by refusal to labor.
674. Publishing false messages.
675. Acts not expressly forbidden.
676. Acts committed out of the state.

§ 670. **Attorneys forbidden to defend certain prosecutions, etc.**—An attorney, who directly or indirectly advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by a person as district attorney or other public prosecutor, with whom such attorney is directly or indirectly connected as a partner; or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court, as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise; or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor.

See §§ 136, 139, 148, 149, *ante*.

§ 671. **Attorneys may defend themselves.**—The last section does not affect §§ 78, 79, 80 and 81 of the Code of Civil Procedure, and does not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 672. **Fraudulently presenting bills or claims to public officers for payment.**— A person who, knowingly, with intent to defraud, presents, for audit, or allowance, or for payment, to any officer or board of officers of the state, or of any county, town, city or village, authorized to audit, or allow or to pay bills, claims or charges, any false or fraudulent claim, bill, account, writing or voucher, or any bill, account or demand, containing false or fraudulent charges, items or claims, is guilty of a felony.

See §§ 165, 166 *ante*. People, *ex rel*. Phelps, v. O. & T., 88 N. Y. 486; O'Reilly v. People, 86 id. 154; People v. Bragle, 88 id. 585; 63 How. 143; 10 Abb. N.C. 300.

§ 673. **Endangering life by refusal to labor.**— A person, who willfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.

See §§ 168, 170, 653, *supra;* People v. Barondess, 41 N. Y. State Rep'r, 662.

§ 674. **Publishing false messages.**— A person, who prints, publishes or circulates, as true, any message, order or proclamation purporting to be the message, order or proclamation of the executive of the United States or of this state, or of any other state of the United States now or hereafter admitted, or of any territory of the United States, knowing the same not to be genuine, is punishable, by imprisonment in a state prison not exceeding five years, or by fine not exceeding one thousand dollars, or by both. An indictment for this offense may be found in any county in which the message, address or proclamation is printed, published or circulated but not in more than one county of the state.

§ 675. **Relating to disorderly conduct on public conveyances.** — Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person or persons in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language, or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor. A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this Code, is guilty of a misdemeanor; but nothing in this Code contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered. [AMD. CH. 327 of 1891. In effect September 1, 1891.]

See § 170, *ante*. People v. Hislop, 77 N. Y. 331; Matter of Jacobs, 98 id. 98; People v. Marx, 99 id. 377; People v. Cipperly, 3 N. E. Rep'r, 558; 101 N. Y. 634; People v. Barondess, 41 N. Y. State Rep'r, 662.

§ 676. Acts committed out of the state.—A person who commits an act without this state which affects persons or property within this state, or the public health, morals, or decency of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state.

See § 16, *ante*; § 678, *post*. People v. Lyon, 99 N. Y. 219, rev'g 33 Hun, 623; 2 N. Y. Cr 484.

TITLE XVIII.

General Provisions.

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§ 677. When crimes punishable in different ways.—An act or omission which is made criminal and punishable in different ways,

by different provisions of law, may be punished under any one of those provisions, but not under more than one; and a conviction or acquittal under one bars a prosecution for the same act or omission under any other provision.

People v. Church, 1 How. (N. S.) 366; Brooklyn v. Toynbee, 31 Barb 282; Polinsky v. People, 11 Hun, 390; aff'd, 78 N. Y. 65; People, *ex rel.* McDonald, v. Keeler, 99 N. Y. 463, rev'g 32 Hun, 590; 3 N. Y. Cr. 351; People, *ex rel.* Van Houton, v. Sadler, 97 N. Y. 146; Blatchley v. Moser, 15 Wend. 215; People v. Stevens, 13 id. 341; Rogers v. Jones, 1 id. 261; Com. v. Trichey, 13 Allen, 559; Com. v. McConnell, 11 Gray, 204; Huffsmith v. People, 8 Col. 175; 54 Am. Rep. 550. Bar. People v. Krank, 110 N. Y. 492, rev'g 46 Hun, 632; McRea v. Mayor, etc., 59 Ga. 168; 27 Am. Rep. 390; Wragg v. Penn. Township, 94 Ill. 23; Robbins v. People, 95 id. 178; State v. Lee, 29 Minn. 445; Waldo v. Wallace, 12 Ind. 584; Shafer v. Mumma, 17 Md. 331; Mayor v. Allaire, 14 Ala. 404; State v. Sly, 4 Ore. 278; State v. Bergman, 6 id 343; State v. Hamilton, 3 Tex. App. 643; Brownsville v. Cook, 4 Neb. 105; Greenwood v. State, 6 Baxt. 567; 32 Am. Rep. 539; McLaughlin v. Stevens, 2 Cranch C. C. 149.

§ 678. **Acts punishable under foreign law.**—An act or omission declared punishable by this Code. is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this Code.

See § 676, *ante.*

§ 679. **Foreign conviction or acquittal.**—Whenever it appears upon the trial of an indictment, that the offense was committed in another state or country, or under such circumstances that the courts of this state or government had jurisdiction thereof, and that the defendant has already been acquitted or convicted on the merits upon a criminal prosecution under the laws of such state, or country, founded upon the act or omission in respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

Code Cr. Proc., § 139.

§ 680. **Contempt, how punishable.**—A criminal act is not the less punishable as a crime, because it is also declared to be punishable as a contempt of court.

See § 143, *ante.* Eagan v. Lynch, 3 Bro. Civ. Proc. 236; People v. Cole, 2 N. Y. Cr. 108; People, *ex rel.* Sherwin, v. Mead, 92 N. Y. 420; People, *ex rel.* McDonald, v. Keeler, 99 id. 463, rev'g 32 Hun, 590; 3 N. Y. Cr. 354.

§ 681. **Mitigation of punishment, etc.**—Where it appears, at the time of passing sentence on a person convicted that he has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court, passing sentence, may mitigate the punishment to be imposed, in its discretion.

See § 143, *ante.* People, *ex rel.* McDonald, v. Keeler, 99 N. Y. 463, rev'g 32 Hun, 590; 3 N. Y. Cr. 351.

§ 682. **Rule for punishment of accessory.**—When an act or omission is declared by statute to be a misdemeanor, and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who aids, or abets another in such act or omission is also guilty of a misdemeanor.

See § 31, *ante.*

§ 683. **Sending letter, when deemed complete.**—In the various cases, in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post-office or other place, or delivered to any person, with intent that it shall be forwarded. And the party may be indicted and tried in any county wherein such letter is so deposited or delivered, or in which it is received by the person to whom it is addressed.

See §§ 235, 558, 559, *ante*.

§ 684. **Omission to perform duty.**—No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

See §§ 117, 154, *ante*.

§ 685. **Attempts to commit crime.**—A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court, in its discretion, discharges the jury and directs the defendant to be tried for the crime itself.

See §§ 34, 35, *ante*.
Darrow v. Family F. Society, 116 N. Y. 537; 27 N. Y. State Rep'r, 477, aff'g 42 Hun, 247; People v. O'Connell, 60 id. 113; People v. Dartmore, 48 id. 323; People v. Sullivan, 27 id. 38.

§ 686. **Id.**—A person who unsuccessfully attempts to commit a crime is indictable and punishable, unless otherwise specially prescribed by statute, as follows:

1. If the crime attempted is punishable by the death of the offender, or by imprisonment for life, the person convicted of the attempt is punishable by imprisonment for not more than ten years.

2. In any other case, he is punishable by imprisonment for not more than half of the longest term, or by a fine not more than one-half of the largest sum, prescribed upon a conviction for the commission of the offense attempted, or by both such fine and imprisonment.

Darrow v. Family F. Society, 116 N. Y. 537; 27 N. Y. State Rep'r, 477, aff'g 42 Hun, 247; People v. Dartmore, 48 id. 323; People v. Moran, 123 N. Y. 256; 33 N. Y. State Rep'r, 398; People v. Johnson, 110 N. Y. 141; People v. O'Connell, 60 Hun, 113; 38 N. Y. State Rep'r, 108; People v. Phelps, 39 id. 599

§ 687. **Restrictions upon preceding sections.**—The last section does not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 688. **Second offense.**—A person, who, after having been convicted within this state, of a felony, or an attempt to commit a felony, or of petty larceny, or, under the laws of any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any crime, within this state, is punishable upon conviction of such second offense, as follows:

1. If the subsequent crime is such that, upon a first conviction, the offender might be punished, in the discretion of the court, by im-

prisonment for life, he must be sentenced to imprisonment in a state prison for life;

2. If the subsequent crime is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than the longest term, nor more than twice the longest term, prescribed upon a first conviction.

People v. Raymond, 19 W. Dig. 137; 2 id. 295; 32 Hun, 123; 96 N. Y. 38; People v. Caesar, 1 Park. 648; People v. Cook, 45 Hun, 37; People v. Price, 53 id. 187; 6 N. Y. Cr. 144; 24 N. Y. State Rep'r, 936; 5 N. Y. Supp. 833; 119 N. Y. 650; People v. Gibson, 5 Hun, 542; Kelly v. People, 115 Ill. 583; 56 Am. Rep. 184; People v. Stanley, 47 Cal. 113; 17 Am. Rep. 401; People v. Powers, 6 N. Y. 50; Wood v. People, 53 id. 511; People v. Golden, 3 Park. 330; People v. Youngs, 1 Cai. 37; State v. Welch, 9 E. R. 887.

§ 689. **Second offense.** — A person who, having been convicted within this state of a misdemeanor, afterwards commits and is convicted of a felony, must be sentenced to imprisonment for the longest term prescribed for the punishment upon a first conviction for the felony.

See cases cited under § 688, *supra*.

§ 690. **Habitual criminals.** — Where a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this state, of any other crime, or where a person is hereafter convicted of a misdemeanor who has been already five times convicted in this state of a misdemeanor, he may be adjudged by the court, in addition to any other punishment inflicted upon him, to be an habitual criminal.

Code Cr. Proc., § 510. People v. McCarthy, 45 How. 97.

§ 691. **Person, etc., of habitual criminal.** — The person of an habitual criminal shall be at all times subject to the supervision of every judicial magistrate of the county, and of the supervisors and overseers of the poor of the town where the criminal may be found, to the same extent that a minor is subject to the control of his parent or guardian.

Code Cr. Proc., § 514.

§ 692. **Effect of pardon.** — The governor may grant a pardon which shall relieve from judgment of habitual criminality as from any other sentence; but upon a subsequent conviction for felony of a person so pardoned, a judgment of habitual criminality may be again pronounced on account of the first conviction, notwithstanding such pardon.

People v. Price, 53 Hun, 188; 24 N. Y. State Rep'r, 936.

§ 693. **Woman concealing birth of issue.** — A woman, who, having been convicted of endeavoring to conceal the still birth of any issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death, is punishable by imprisonment in a state prison not exceeding five years, and not less than two years.

See § 296, *ante*; § 698, *post*.

§ 694. **Imprisonment on two or more convictions.**— Where a person is convicted of two or more offenses, before sentence has been pronounced upon him for either offense, the imprisonment, to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first or other prior term or terms of imprisonment, to which he is sentenced.

People, *ex rel.* Tweed, v. Liscomb, 60 N. Y. 560.

§ 695. **Id.** — Where a person, under sentence for a felony, afterward commits any other felony, and is thereof convicted and sentenced to another term of imprisonment, the latter term shall not begin until the expiration of all the terms of imprisonment, to which he is already sentenced.

Haggerty v. People, 58 N. Y. 642; 6 Lans. 347; Thomas v. People, 67 N. Y. 218.

§ 696. **Life sentences, etc.**—When a crime is declared by statute to be punishable by imprisonment for not less than a specified number of years, and no limit of the duration of the imprisonment is declared, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment during his natural life, or for any number of years not less than the amount prescribed.

When a crime is declared by any of the provisions of this Code to be punishable by imprisonment for not more than a specified number of years, the court authorized to pronounce judgment upon conviction may, in its discretion, sentence the offender to imprisonment for any time less than that prescribed by the provisions of this act. [As AMD. BY CH. 663, LAWS 1892. Took effect May 17, 1892.]

§ 697. **Calculating term.**—When a convict is to be sentenced to imprisonment in a state prison or a penitentiary, the court before which the conviction was had must limit the term of the sentence, having reference to the probability of the convict earning a reduction of his term for good behavior, as provided by chapter twenty-one of the laws of eighteen hundred and eighty-six, and assuming that such reduction will be earned, so that the sentence will expire during either of the following months: April, May, June, July, August, September and October.

But the provisions of this section shall not apply in the following cases:

1. Where the sentence is to be for the term of one year or less.
2. Where the term of imprisonment for the crime of which the convict was convicted absolutely fixes a single definite period of time.
3. Where a judgment of conviction has been affirmed upon an appeal, and it becomes necessary for the court to impose the same sentence as that originally imposed. The officers of every prison or penitentiary are hereby expressly prohibited from taking into their custody any convict sentenced in violation of the provisions of this section, and any convict so illegally sentenced shall be returned by the sheriff of the county where the conviction was had to the court to be re-sentenced in conformity to the provisions of this section. Provided that if it shall appear to the officers of any prison or penitentiary at the time it is sought to incarcerate a convict therein that

the court which imposed the sentence has adjourned, then it shall be lawful for said officers to receive said convict and hold him in their custody until he can be re-sentenced as herein provided, and the second or re-sentence shall be deemed to have begun on the date of the convict's reception under his first sentence. The officers of any prison or penitentiary shall, in the case of a convict so illegally sentenced to imprisonment therein, immediately notify the court of their action. [AMD. CH. 492 of 1888. In effect June 29, 1888. AMENDING CH. 68 of 1886.]

People v. Trimble 60 Hun, 364; 38 N. Y. State Rep'r, 999. See 49 Cal. 463; 42 Penn. St. 446.

§ 698. **Imprisonment of female convict.**—A female, convicted of a felony punishable by imprisonment, must be sentenced to imprisonment in a county penitentiary, instead of a state prison. If there is no penitentiary in the county in which she is convicted, she must be sentenced to imprisonment in the nearest penitentiary.

See § 698, *ante*.

§ 699. **Persons between the age of sixteen and twenty-one years.**—Where a person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at five years or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a state prison, if there is a county penitentiary within the judicial department in which the trial is had. [AMD. BY CH. 469, LAWS 1892. Took effect May 12, 1892.]

§ 700. **Persons between sixteen and thirty years.**— A male between the ages of sixteen and thirty, convicted of felony, who has not theretofore been convicted of a crime punishable by imprisonment in a state prison, may, in the discretion of the trial court be sentenced to imprisonment in the New York State Reformatory at Elmira, to be there confined under the provisions of law relating to that reformatory. [AMD. CH. 145 of 1888.]

§ 701. **House of refuge.**— Where a person under the age of sixteen years is convicted of crime, the trial court may, instead of sentencing him to imprisonment in a state prison or in a penitentiary, direct him to be confined in a house of refuge under the provisions of the statute relating thereto. Where the conviction is had and the sentence is inflicted in the first, second, or third judicial district, the place of confinement must be the house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York; where the conviction is had and the sentence inflicted in any other district, the place of confinement must be in the western house of refuge for juvenile delinquents. But nothing in this section shall affect the provision contained in section 713.

Park v. People, 1 Lans. 263; Matter of Reilly, 18 W. Dig. 515; People v. Degnen, 6 Abb. (N. S.) 87; 54 Barb. 105.

§ 702. **Imprisonment in county jail.**— Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term less than one year, the imprisonment must be inflicted by confinement in the county jail, or place of confinement

designated by law to be used as the jail of the county, except when otherwise specially prescribed by statute.

People v. Parr, 4 N. Y. Cr. [illegible]

§ 703. **Id.; in county jail or state prison.**— Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term of one year, he may be sentenced to, and the imprisonmemt may be inflicted by, confinement either in a county jail, or in a penitentiary or state prison. No person shall be sentenced to imprisonment in a state prison for less than one year.

People, *ex rel.* Devoe, v. Kelly, 2 N. Y. Cr. 432; 32 Hun, 536; 97 N. Y. 212; People v. Parr, 4 N. Y. Cr. 546; People v. Lyon, 99 N. Y. 210.

§ 704. **Id.; in state prison.**— Where a person is convicted of a crime, for which the punishment inflicted is imprisonment for a term exceeding one year, or is sentenced to imprisonment for such a term, the imprisonment must be inflicted by confinement at hard labor in a state prison. But this and the two last sections shall not apply to a case where special provision is made by statute as to the punishment for any particular offense or class of offenses or offenders, nor to the cases specified in sections 698, 699, 700 and 701.

4 Cr. Law Mag. 797; People v. Dewey, 33 N. Y. State Rep'r, 427.

§ 705. **Place to be specified in sentence; removal.**— The place of the imprisonment must be specified in the judgment and sentence of the court. But convicts may be removed from one place of confinement to another, in a case, and by the authority designated by statute.

People, *ex rel.* King, v. McEwen, 62 How. Pr. 226. *Contra*, People v. Lincoln, id. 412; Brown v. People, 75 N. Y. 437. Remedy by appeal for incorrect sentence. People v. Kelly, 19 W. Dig. 205; 2 N. Y. Cr. 428; Weed v. People, 31 N. Y. 467; Matter of Waterman, 33 Fed. Rep'r, 29.

§ 706. **Limit of fine.**—Where, in this Code, or in any other statute making any crime punishable by a fine, the amount of the fine is not specified, a fine of not more than five hundred dollars may be imposed.

See § 14, *ante*.

§ 707. **Forfeiture.**—A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced.

O'Brien v. Hagan, 1 Duer, 664; Miller v. Finkle, 1 Park. 374; Bowles v. Habermann, 95 N. Y. 246.

§ 708. **Consequence of sentence.**— A person sentenced to imprisonment for life is thereafter deemed civilly dead.

Avery v. Everett, 36 Hun, 6; 110 N. Y. 323; Preston v. Palmer, 42 Hun, 388.

§ 709. **Convict protected by law.**— A convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not sentenced or convicted.

Davis v. Duffie, 4 Abb. Pr. (N. S.) 478.

§ 710. **Certain [illegible] are abolished.**—A conviction of a person for any crime does n[illegible] work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures to the people of the state, in the nature of deodands, or in a case of suicide, or where a person flees from justice, [illegible] abolished.

See § 173, *ante*. Code Cr. Proc., § 819. Darrow v. Family F. Soc., 43 Hun, 245; Preston v. Palmer, 42 id. 388.

§ 711. **Convict voting.**—The prohibition to vote at an election, contained in any statute of the state, shall not apply to a person heretofore or hereafter convicted of any crime, who has been sentenced or committed therefor to one of the houses of refuge, or other reformatories organized under the statutes of the state.

People v. Harrington, 15 Abb. N. C. 163; 1 How. (N. S.) 37; 3 N. Y. Cr. 141.

§ 712. **Witnesses' testimony.**—The sections of this Code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding, do not forbid such evidence being proved against such person upon any charge of perjury committed in such examination.

See §§ 79, 142, 241, 342, 469, *ante*. People v. Sharp, 107 N. Y. 441.

§ 713. **Sentence of minor.**—When a person under the age of sixteen is convicted of a crime, he may, in the discretion of the court, instead of being sentenced to fine or imprisonment, be placed in charge of any suitable person or institution willing to receive him, and be thereafter, until majority or for a shorter term, subjected to such discipline and control of the person or institution receiving him as a parent or guardian may lawfully exercise over a minor. A child under sixteen years of age committed for misdemeanor, under any provision of this Code, must be committed to some reformatory, charitable or other institution authorized by law to receive and take charge of minors. And when any such child is committed to an institution, it shall, when practicable, be committed to an institution governed by persons of the same religious faith as the parents of such child. [AMD. CH. 46 of 1884.]

People, *ex rel.* M. Magdalen School, v. Dickson, 57 Hun, 314; 32 N. Y. State Rep'r, 496.

§ 714. **Convict as witness.**—A person heretofore or hereafter convicted of any crime is, notwithstanding, a competent witness, in any cause or proceeding, civil or criminal, but the conviction may be proved for the purpose of affecting the weight of his testimony, either by the record, or by his cross-examination, upon which he must answer any proper question relevant to that inquiry; and the party cross-examining is not concluded by the answer to such question.

See Code Civ. Proc., § 832; § 393, Code Crim. Proc.; People v. McGloin, 91 N. Y. 241; 1 N. Y. Cr. 154; 12 Abb. N. C. 172, aff'g 28 Hun, 155; 1 N. Y. Cr. 105; People v. Rose, 52 Hun, 37; 22 N. Y. State Rep'r, 393; Morenus v. Crawford, 51 Hun, 96; 24 N. Y. State Rep'r, 184; People v. Parr, 42 Hun, 316; 4 N. Y. Cr. 546; 5 id. 36; Spiegal v. Hays, 118 N. Y. 661; 27 N. Y. State Rep'r, 858; People v. Chapleau, 121 N. Y. 276; 30 N. Y. State Rep'r, 994; People v. Satterlee, 5 Hun, 167; People v. Burns, 33 id. 296; 2 N. Y. Cr. 415; People v. O'Neil, 109 N. Y. 266; 48 Hun, 45; 5 N. Y. Cr. 331; People v. Crapo, 76 N. Y. 288; People v. Irving, 95 id. 541; People v. Brown, 72 N. Y. 571; People v. Casey, 72 id. 393; Nat. Trust Co. v. Gleason, 77 id. 400; State v. Grant, 79 Mo. 113; 49 Am. Rep. 218; People v.

Johnson, 57 Cal. 571; State v. Foley, 15 Nev. 64; 37 Am. Rep. 458; Carpenter v. Nixon, 5 Hill, 260; Shay v. People, 22 N. Y. 317; Newcomb v. Griswold, 24 id. 298; Ryan v. People, 79 id. 593; People v. Kelly, 86 id. 353; 35 Hun, 304; People v. Noelke, 94 N. Y. 137; People v. Hovey, 92 id. 554; 29 Hun, 382; People v. Petmecky, 99 N. Y. 415; Gardner v. Bartholomew, 40 Barb. 325; People v. Schewe, 29 Hun, 122.

§ 715. **Husband and wife as witnesses.**— The husband or wife of a person indicted or accused of a crime is in all cases a competent witness, on the examination or trial of such person; but neither husband nor wife can be compelled to disclose a confidential communication, made by one to the other during their marriage.

See §§ 828, 831 of Code Civ. Proc.; People v. Petmecky, 2 N. Y. Cr. 450; People v. Houghton, 24 Hun, 501; People v. Hovey, 29 id. 382; People v. Briggs, 60 How. 31; People v. Houghton, 24 Hun, 501; People v. Wentworth, 4 N. Y. Cr. 207; People v. Carpenter, 9 Barb. 580; People v. Northrop, 50 id. 147; Foster's case, 13 Abb. (N. S.) 372; Chamberlain v. People, 23 N. Y. 89; Dennis v. Crittenden, 42 id. 542; Wilke v. People, 53 id. 525; People, *ex rel.* Com'rs, v. Bartholf, 24 Hun, 272; People v. Wood, 126 N. Y. 271; 36 N. Y. State Rep'r, 966; People v. Lewis, 42 id. 768, 772.

§ 716. **Creditor of convict.**—A person injured by the commission of a felony, for which the offender is sentenced to imprisonment in a state prison, is deemed the creditor of the offender, and of his estate after his death, within the provisions of the statutes relating thereto.

§ 717. **Damages, how ascertained.**—In a case specified in the last section, the damages sustained by the person injured by the felonious act, may be ascertained in an action brought for that purpose by him against the trustees of the estate of the offender, appointed under the provisions of the statutes, or the executor or administrator of the offender's estate.

§ 718. **Construction of terms.**—In construing this Code, or an indictment or other pleading in a case provided for by this Code, the following rules must be observed, except when a contrary intent is plainly declared in the provision to be construed, or plainly apparent from the context thereof:

1. Each of the terms "neglect," "negligence," "negligent," and "negligently," imports a want of such attention to the nature or probable consequences of the act or omission, as a prudent man ordinarily bestows in acting in his own concerns;

2. Each of the terms "corrupt" and "corruptly" imports a wrongful desire to acquire, or cause some pecuniary or other advantage to, or by the person guilty of the act or omission referred to, or some other person;

3. Each of the terms "malice" and "maliciously" imports an evil intent, or wish or design to vex, annoy, or injure another person, or to maltreat or injure an animal;

4. The term "knowingly" imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfulness of the act or omission;

5. Where an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person;

6. The term "vessel" includes ships, steamers, canal-boats, and every boat or structure adapted to navigation, or movement from

place to place by water, either upon the ocean, lakes, rivers, or or* artificial water ways;

7. The term "signature" includes any memorandum, mark, or sign, written with intent to authenticate any instrument or writing, or the subscription of any person thereto;

8. The term "writing" includes both printing and writing;

9. The term "property" includes both real and personal property, things in action, money, bank bills, and all articles of value;

10. The singular number includes the plural, and the plural the singular;

11. A word used in the masculine gender comprehends as well the feminine and neuter;

12. A word used in the present tense includes the future;

13. The term "person" includes a corporation or joint association as well as a natural person. When it is used to designate a party whose property may be the subject of any offense, it also includes the state, or any other state, government or country which may lawfully own property within the state;

14. The term "real property" includes every estate, interest and right in lands, tenements, hereditaments;

15. The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right or title to property, real or personal, is created, acknowledged, transferred, increased, defeated, discharged or diminished, and every right and interest therein.

16. The terms "reputed house of prostitution or assignation," "house of prostitution," "house of ill-fame or assignation," "disorderly house," include all premises which by common fame or report are used for purposes of prostitution or assignation. [ADDED CH. 31 of 1886.]

Subs. 9-15 inclusive of this section repealed by chap. 677 of 1892.

Sub. 1. People v. Buddensieck, 103 N. Y. 487; 1 N. Y. State Rep'r, 450; Moebus v. Hermann, 108 N. Y. 353; New York Guaranty Co. v. Gleason, 53 How. 125; Sherman v. Transportation Co., 62 Barb. 150; Rosenplaenter v. Roessle, 54 N. Y. 208; Anderson v. How, 116 N. Y. 341; 26 N. Y. State Rep'r, 790.

Sub. 3. People v. Stark, 59 Hun, 57; 35 N. Y. State Rep'r, 184.

Sub. 4. Anderson v. How, 116 N. Y. 341; 26 N. Y. State Rep'r, 790.

Sub. 5. See § 721, *post*. People v. D'Argencour, 32 Hun, 178; People v. Martin, 2 N. Y. Cr. 51; People v. Wise, 2 How. (N. S.) 92; People v. Moore, 37 Hun, 84; 3 N. Y. Cr. 458.

Sub. 6. Crawford v. Collins, 45 Barb. 269; 30 Hun, 398; Tinken v. Stillwagon, 1 City Ct. Rep. 390; Walsh v. N. Y. Dock Co., 77 N. Y. 448; 8 Daly, 387.

Sub. 9. People v. Stevens, 38 Hun, 62; 3 N. Y. Cr. 583; Collyer v. Collyer, 50 Hun, 424; 21 N. Y. State Rep'r, 119.

Sub. 10. State v. Main, 31 Conn. 574.

Sub. 13. Matter of McMahon, 66 How. 192; People, *ex rel.* Bay State, etc., Co., v. McLean, 80 N. Y. 259; Republic of Honduras v. Soto, 112 id. 310; United States T. Co. v. West. Union Co., 56 Barb. 47; People v. May, 27 id. 238; British, etc., v. Com'rs, 31 N. Y. 32; People v. Rector, 22 id. 44; State v. Waterloo Turn Verein, 71 Iowa, 226; 60 Am. Rep. 786; State v. Herold, 9 Kans. 194; Martin v. State, 24 Tex. 61.

Sub. 15. Phelps v. People, 72 N. Y. 350; People v. Stevens, 38 Hun, 62; 3 N. Y. Cr. 583. See People v. Clements, 3 N. Y. State Rep'r, 700.

§ 719. Application of this Code to prior offenses. — Nothing contained in any provision of this Code applies to an offense committed or other act done, at any time before the day when this Code

* So in original.

takes effect. Such an offense must be punished according to, and such act must be governed by, the provisions of law existing when it is done or committed, in the same manner as if this Code had not been passed; except that, whenever the punishment or penalty for an offense is mitigated by any provision of this Code, such provision may be applied to any sentence or judgment imposed for the offense after this Code takes effect. An offense specified in this Code, committed after the beginning of the day when this Code takes effect, must be punished according to the provisions of this Code, and not otherwise.

See § 2, *ante;* § 962, Code Civ. Proc; People, *ex rel.* McDonald, v. Keeler, 91 N. Y. 463; 32 Hun, 589; 3 N. Y. Cr. 354; People v. McTameney, 30 Hun, 505; 13 Abb. N. C. 65; 1 N. Y. Cr 437; 66 How. 74; People v. Raymond, 96 N. Y. 38; Matter of Hallenbeck, 65 How. 501; People, *ex rel.* Van Houton, v. Sadler, 97 N. Y. 146; Matter of Hoffman, 1 N. Y. Cr. 484; People v. Burleigh, id. 523; People v. Dowling, id. 530; People v. Catholic Prot., 4 id. 79; People v. Jaehne, 103 N. Y. 182; 7 E. R. 290; 4 N. Y. Cr. 478; People v. Coffee, 62 How. 352; Matter of Walker, id. 352; Wallach v. Sippilli, 65 id. 501; People v. O'Neil, 109 N. Y. 251; People v. Beckwith, 108 id. 67.

§ 720. **Id.**— The provisions of this Code are not to be deemed to affect any civil rights or remedies existing at the time when this Code takes effect, by virtue of the common law or of any provision of statute.

§ 721. **Intent to defraud.** — Whenever, by any of the provisions of this Code, an intent to defraud is required, in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate, whatever.

See sub. 5 of § 718, *ante.*

§ 722. **Civil remedies preserved.** — The omission to specify or affirm in this Code any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 723. **Proceedings to impeach, etc., preserved.**— The omission to specify or affirm in this Code any ground or forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension.

§ 724. **Military punishments, etc., preserved.**— This Code does not affect any power conferred by law upon any court-martial or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officers, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants, except so far as any provisions therein are inconsistent with this Code.

Matter of Riley, 31 Hun, 613; People, *ex rel.* McDonald, v. Keeler, 99 N. Y. 475; 3 N. Y. Cr. 354; Matter of McMahon, 64 How. 285; 1 N. Y. Cr. 60.

§ 725. **Certain statutes continuing in force.**— Nothing in this Code affects any of the provisions of the following statutes; but such statutes are recognized as continuing in force, notwithstanding the provisions of this Code; except so far as they have been repealed or affected by subsequent laws;

1. All acts incorporating municipal corporations, and acts amending acts of incorporation or charters of such corporation, or providing for the election or appointment of officers therein, or defining the powers and duties of such officers.

2. All acts relating to emigrants or other passengers in vessels coming from foreign countries, except as provided in section 626 of this Code.

3. All acts for the punishment of intoxication or the suppression of intemperance or regulating the sale or disposition of intoxicating or spirituous liquors.

4. All acts defining and providing for the punishment of offenses and not defined and made punishable by this Code.

Sub. 1. People v. Jaehne, 103 N. Y. 198; 4 N. Y. Cr. 478.
Sub. 3. Liquors and license. People v. Schewe, 1 N. Y. Cr. 361; People v. Myers, 2 id. 128; 95 N. Y. 223.
Sub. 4. Matter of McMahon, 64 How. 285; 1 N. Y. Cr. 58; People v. Bernardo, id. 245; Rockwood v. Oakfield, 2 N. Y. State Rep'r, 331; People v. Page, 22 id. 248.
See People v. Moran, 54 Hun, 282; 27 N. Y. State Rep'r, 20; People v. Rontey, 21 id. 175; Jaehne v. People, 6 N. Y. Cr. 239.

§ 726. **General repeal.**— All acts and parts of acts which are inconsistent with the provisions of this act are repealed, so far as they impose any punishment for crime, except as herein provided.

People, *ex rel.* McDonald, v. Keeler, 99 N. Y. 463. Relative priority of this Code and N. Y. consolidated acts. People, *ex rel.* Van Heck, v. Catholic Protectory, 38 Hun, 127; 4 N. Y. Cr. 79. People v. Courtney, 1 id. 64; People v. Bernardo, id. 247; People v. Trumble, id. 442; People v. Russell, 3 id. 474; Matter of McMahon, 64 How. 285; 1 N. Y. Cr. 58; Matter of Hallenbeck, 65 How. 401; People v. McTameney, 30 Hun, 505; 13 Abb. N. C. 55; 1 N. Y. Cr. 437; 66 How. 73; Matter of Riley, 31 Hun, 613; Rockwood v. Oakfield, 2 N. Y. State Rep'r, 331; People v. Jaehne, 103 N. Y. 182; 4 N. Y. Cr. 478; People v. Rontey, 21 N. Y. State Rep'r, 173; 4 N. Y. Supp. 235; 6 N. Y. Cr. 249; aff'd, 117 N. Y. 624; 22 Daily Reg. 467; 23 id. 1069.

§ 727. **When act to take effect.**— This act shall take effect on the first day of December, 1882. When construed in connection with other statutes, it must be deemed to have been enacted on the fourth day of January, eighteen hundred and eighty-one, so that any statute enacted after that day is to have the same effect as if it had been enacted after this Code.

People v. Page, 22 N. Y. State Rep'r, 277; 7 N. Y. Cr. 5; 4 N. Y. Supp. 780; People v. Beckwith, 108 N. Y. 67; People v. Jaehne, 103 id. 188; 4 N. Y. Cr. 478; People v. O'Neil, 109 N. Y. 261, aff'g 48 Hun, 46; People, *ex rel.* Laughlin, v. Finn, 26 id. 59; aff'd, 87, 533; Matter of McMahon, 1 N. Y. Cr. 63; People v. Ryland, 2 id. 440; People v. Beckwith (Gen. T.), 7 N. Y. Cr. 148.

§ 728. **Repeal must be express.**— No provision of this Code, or any part thereof, shall be deemed repealed, altered or amended by the passage of any subsequent statute inconsistent therewith, unless such statute shall explicitly refer thereto and directly repeal, alter or amend this Code accordingly. [ADDED CH. 31 of 1886. Passed March 3, 1886.]

Mongeon v. People, 55 N. Y. 613, 618; Nash v. White's Bank, 105 id. 243, 245.

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